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INTERIM REPORT OF THE AD HOC WORKING GROUP OF EXPERTS ON SOUTHERN AFRICA PREPARED IN ACCORDANCE WITH COMMISSION ON HUMAN RIGHTS RESOLUTIONS 1989/3 AND 1989/5 AND ECONOMIC AND SOCIAL COUNCIL DECISION 1989/136

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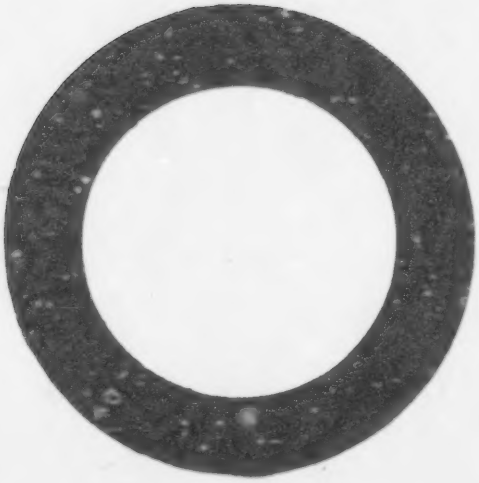

INTRODUCTION

A. Mandate and composition of the Ad Hoc Working Group of Experts

1. The mandate of the Ad Hoc Working Group of Experts on southern Africa, established in 1967 under resolution 2 (XXIII) of the Commission on Human Rights, was renewed by the Commission in resolution 1989/5 of 23 February 1989. The Economic and Social Council approved that resolution by decision 1989/136 of 24 May 1989. The mandate of the Working Group covers the period 1989-1990.

2. At its forty-fifth session, the Commission on Human Rights decided, by resolution 1989/5 (para. 27), that the Ad Hoc Working Group of Experts should be composed of the following experts acting in their personal capacity: Mr. Felix Ermacora (Austria); Mr. Humberto Díaz Casanueva (Chile); Mr. Mulka Govinda Reddy (India); Mr. Elly Elikunda E. Mtango (United Republic of Tanzania); Mr. Branimir Jankovic (Yugoslavia); Mr. Mikuin Leliel Balanda (Zaire). In accordance with the procedure established by the Working Group, Mr. Balanda was re-elected chairman of the Group and Mr. Díaz Casanueva vice-chairman.

3. By the same resolution, the Commission decided (para. 27) that the Working Group should continue to investigate and study the policies and practices which violate human rights in South Africa and Namibia, as well as infringements of trade-union rights in South Africa. The question of infringements of trade-union rights in South Africa is dealt with in chapter IV of the present report. The Commission also requested the Working Group (para. 28), in co-operation with the Special Committee against Apartheid and other investigatory and monitoring bodies, to continue to investigate cases of torture and ill-treatment of detainees and deaths of detainees in South Africa. This matter is dealt with in chapter I of this report. Furthermore, the Commission requested the Working Group (para. 30) to continue to bring to the attention of the Chairman of the Commission on Human Rights, for whatever action he might deem appropriate, particularly serious violations of human rights in South Africa which might come to its attention during its studies. The Commission also requested the Working Group (para. 32) to submit its interim report to the Commission at its forty-sixth session and to the General Assembly at its forty-fifth session.

4. In accordance with the practice followed since its establishment, the Working Group wishes to state that, at the present stage, it is submitting an interim report containing neither conclusions nor recommendations concerning the situation in South Africa. However, the Working Group intends to formulate conclusions and make recommendations in the final report which it is to submit to the Commission at its forty-seventh session, in compliance with paragraph 32 of Commission resolution 1989/5.

5. The Commission also renewed its request to the Government of South Africa (para. 29) to allow the Ad Hoc Working Group of Experts to make on-the-spot investigations of the living conditions in prisons in South Africa and Namibia and the treatment of prisoners in such a manner that:

(a) The Ad Hoc Working Group of Experts would be guaranteed free, confidential access to any prisoner, detainee, ex-prisoner, ex-detainee or any other persons;

(b) The South African Government would provide a firm undertaking that any person providing evidence for such an investigation would be granted immunity from any State action arising from participation in the investigation.

6. In this regard, it should be recalled that, in a letter dated 30 June 1989 addressed to the South African Government on behalf of the Working Group by the Under-Secretary-General for Human Rights, the request made by the Commission on Human Rights and, more specifically, in paragraph 29 of its resolution 1989/5, was drawn to the attention of the South African Government.

7. The reply transmitted by the South African Government, dated 5 October 1989, to the Under-Secretary-General for Human Rights, is reproduced below:

> "I have the honour to refer to your note G/SO 214 (47-5) of 30 June 1989 in which you drew my attention to the relevant resolutions adopted by the United Nations Commission on Human Rights, concerning the mandate of the Ad Hoc Working Group of Experts.
>
> "I am instructed to advise you that the South African authorities, having had the opportunity to study the Group's 1989 report (document E/CN.4/1989/8 of 31 January 1989), view the present request by the Group in a far more serious light as the one received on 12 April 1989 given recent developments in Namibia.
>
> "I wish furthermore to point out that the Republic of South Africa still has no right to participate in the deliberations of the Commission and its organs and is therefore still unable to make a meaningful contribution to its proceedings in order to introduce some semblance of balance into its reports and resolutions.
>
> (Signed: Leslie Manley,
> Ambassador,
> Permanent Representative to the
> United Nations at Geneva)"

8. Concerning the situation in Namibia, the Commission on Human Rights, in paragraph 24 of its resolution 1989/3 of 23 February 1989, requested the Working Group to report to it at its forty-sixth session on the policies and practices of the apartheid South African régime which violate human rights in Namibia and to submit appropriate recommendations. The Commission also requested the Working Group (para. 22) to make an on-the-spot investigation in 1989 into living conditions in Namibia and the treatment of its people by the racist South African régime.

9. On 14 August 1989, at its 747th meeting, the Ad hoc Working Group of Experts, having considered the new developments prevailing in Namibia, decided to postpone its visit and envisaged the possibility of such a visit in December 1989. At the conclusion of its meetings in December 1989, arrangements had not yet been completed.

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10. On 4 December 1989, at its 756th meeting in Geneva, the Working Group reiterated its intention to undertake the visit to Namibia and therefore decided to transmit the following cable to the Administrator-General of Namibia, seeking authorization for the visit.

> "The Ad Hoc Working Group of Experts on southern Africa of the United Nations Commission on Human Rights, currently meeting at Geneva (Switzerland), has expressed the wish to undertake a visit to Namibia in accordance with paragraph 22 of Commission resolution 1989/3, which requested the Ad Hoc Working Group to make an on-the-spot investigation of living conditions in Namibia and the treatment of its people.
>
> "In order to carry out the mandate entrusted to it by the Commission on Human Rights and the Economic and Social Council, the Ad Hoc Working Group of Experts would be very grateful if you could extend your co-operation for the Group's visit to Namibia by making the necessary arrangements, in particular, entry visas. The Group wishes to undertake the visit in 1989 or as early as possible in 1990.
>
> (Signed: Mikuin Leliel Balanda,
> Chairman of the Ad Hoc Working Group
> of Experts on southern Africa)"

11. At the time of the adoption of its report, the Group had not yet received a reply. Should the Group be able to visit Namibia, it proposes presenting to the Commission an addendum to the section of its report referring to Namibia.

12. Furthermore, the Commission on Human Rights, gravely concerned about reports of the continuing repressive measures targeted on children in South Africa and Namibia, adopted resolution 1989/4 of 23 February 1989, in which it requested the Working Group (para. 8) to pay special attention to the question of detention, torture and other inhuman treatment of children in South Africa and Namibia and report to the Commission at its forty-sixth session. Accordingly, the Working Group will deal with this question in a separate report.

13. On 24 May 1989, the Economic and Social Council, having considered the relevant extract from the Working Group's report (E/1989/88), adopted resolution 1989/82, concerning infringements of trade-union rights in South Africa, and requested the Working Group to continue to study the situation and report thereon to the Commission on Human Rights and the Economic and Social Council.

14. In this connection, it should be remembered that, in its resolution 277 (X) of 17 February 1950, the Economic and Social Council laid down a procedure to be followed in dealing with accusations regarding violations of trade-union rights made against Governments of States Members of the United Nations and members of the International Labour Organisation. The resolution also laid down a procedure for allegations made against States Members of the United Nations not members of the International Labour Organisation. In accordance with that procedure, and following South Africa's withdrawal from ILO in 1966, the Economic and Social Council adopted resolution 1216 (XLII) of 1 June 1967 in which it authorized the Group to receive communications and hear witnesses and to consider the comments

received from the Government of South Africa in its examination of allegations regarding infringements of trade-union rights in South Africa, and requested the Group to report to it on its findings and to submit its recommendations for action to be taken in specific cases.

15. Thus, since 1967, the Working Group has had a mandate to study a number of allegations regarding infringements of trade-union rights in South Africa and to report on the matter to the Commission on Human Rights and the Economic and Social Council. The Working Group deals with this issue in chapter IV of the present report.

16. The present interim report, which was prepared in accordance with the mandate conferred on the Ad Hoc Working Group of Experts under Commission resolutions 1989/3, 4 and 5, and by the Economic and Social Council under its decision 1989/136, was adopted by the Working Group at its meetings held at the United Nations Office at Geneva from 4 to 8 December 1989.

B. Organization of work and working methods

17. In order to pursue the mandate assigned to it by the Commission on Human Rights and the Economic and Social Council, the Ad Hoc Working Group undertook a mission of inquiry to London from 14 to 18 August 1989, during which it gathered information on questions concerning the policies and practices which violate human rights in South Africa and Namibia, on the situation of children, as well as on the question of trade-union rights in South Africa.

18. The Working Group held 9 meetings (746th to 754th meetings), during which it reconsidered its mandate in the light of the renewal thereof, and decided on the organization of its activities for 1989 and 1990. It also considered information concerning developments in the situation in South Africa and Namibia.

19. Given the complementary nature of the two mandates, the Working Group once again undertook its mission in conjunction with Mr. S. Amos Wako, Special Rapporteur on summary and arbitrary executions, in order to gather on-the-spot information concerning violations of the right to life.

20. With respect to the situation in South Africa, 18 witnesses were heard, one at a private meeting. The following witnesses were heard at public meetings: Mr. Aidan White and Mr. Maurice Muthembeni (746th meeting); Mr. N. Rubin and Mr. Kawkwu Tankwa (748th meeting); Mr. Thozamile Botha, Mr. Gavin McFadden, Ms. Lulu Mabena, Ms. Joyce Diseko and Mr. Geoffrey Bindman (749th meeting); Ms. Lucia Otto and Mr. Sipho Pityana (750th meeting); Mr. Mathew Temple (751st meeting); Mr. Michael Terry and Mr. Matthews Oliphant (752nd meeting); Mr. Steven Kibble (753rd meeting); Mr. Max Coleman and Mr. Mark Guthrie (754th meeting).

21. With respect to the situation in Namibia, the following six witnesses were heard at public meetings: Mr. N. Rubin and Mr. Kawkwu Tankwa (748th meeting); Mr. Geoffrey Bindman (749th meeting); Ms. Lucia Otto and Mr. Gavin Cawthra (750th meeting); Mr. Michael Terry (752nd meeting).

22. In conformity with the procedure followed by the Ad Hoc Working Group of Experts since 1967, each witness, after stating his or her identity, was invited by the Chairman to take an oath or make a solemn declaration.

23. The Chairman explained to each witness the goal of the mission and the different subjects which the Group was responsible for investigating.

24. At its 752nd meeting, on 17 August 1989, the Working Group, which had received information concerning Mr. Nelson Mandela, decided to send a telegram requesting the Chairman of the forty-fifth session of the Commission on Human Rights to take whatever action he might deem appropriate, in accordance with paragraph 9 of Commission resolution 1989/5, to persuade those responsible in South Africa to free Mr. Mandela and all other political detainees.

25. The Working Group sent an identical telegram, to the Secretary-General of the United Nations, requesting him to intervene with the Government of South Africa in order to obtain the release of Nelson Mandela and all other political detainees.

26. As in the past, and with a view to the preparation of its interim report, the Working Group analysed the first-hand information it received during its mission of inquiry to London from 14 to 18 August 1989. This information took the form of oral testimony and written communications from individuals and interested organizations. In addition, the Working Group engaged in a systematic review and analysis of documents from the United Nations and the specialized agencies, official gazettes, publications, newspapers and magazines from various countries, as well as of works dealing with matters relevant to its mandate.

27. In preparing its interim report, the Working Group also based itself on the relevant international instruments and took account of the resolutions on the situation in South Africa and Namibia adopted by United Nations organs (General Assembly, Security Council, Economic and Social Council, and Commission on Human Rights), as well as of the relevant resolutions adopted by the World Health Organization and the International Labour Organisation. The Special Committee against Apartheid also participated in the deliberations of the Working Group.

28. In order to give effect to its mandate, the Working Group describes in the present interim report a situation which is of particular concern in South Africa and Namibia. In the light of the above, and always guided by only one objective, which is to inform the international community with the maximum objectivity of the situation prevailing in these territories, the Working Group evaluates the situation in South Africa, particularly as regards the extension of the state of emergency (Part One). Part Two of the report is devoted to an analysis of the specific situation in Namibia, taking into consideration recent positive developments.

PART ONE: SOUTH AFRICA

Chapter I

RIGHT TO LIFE, PHYSICAL INTEGRITY AND PROTECTION FROM ARBITRARY ARREST AND DETENTION

A. Right to life

29. In fulfilling its mandate, the Ad Hoc Working Group of Experts on southern Africa examined information from various sources, evidencing greater repression in South Africa in every respect, especially since the extension of the state of emergency on 9 June 1989. On the basis of the information presented to it, the Working Group considers in this chapter the right to life, the conditions of detention, cases of torture and ill-treatment, cases of death in police custody, death sentences and the administration of justice.

30. Arbitrary or unexplained killings of political activists persist unabated. The total disregard for the life of black people in South Africa is illustrated by the following reports, brought to the attention of the Working Group during the period under consideration.

(a) On 28 January 1989, three persons were killed and eight injured when police opened fire during unrest in Davidsonville, near Roodepoort on the West Rand. The dead were: Mr. Godfrey Witbooi (19), Mr. Eric Menagen (30), and Mr. Flynn Shoemann (23), all from Davidsonville township. According to the police, one man died, five persons were injured and a number of police and municipal vehicles were stoned during the incident, which took place following the stabbing of a 14-year old coloured youth. However, residents who witnessed the incident said trouble started after Mr. Godfrey Witbooi was allegedly shot in the neck by a black policeman who had been instructed to do so by a white policeman. 1/

(b) On 30 January 1989, it was reported that a leading member of South Africa's Black Consciousness movement, Dr. Abubaker Asvat (46), was shot dead in Johannesburg's Soweto township. Dr. Asvat, who was health secretary in the Azanian People's Organization, was killed in his surgery on 27 January 1989. Mrs. Albertina Sisulu, wife of the jailed ANC leader, Mr. Walter Sisulu, who was Dr. Asvat's nurse, found his body after hearing shots. At least two previous attempts had allegedly been made on Dr. Asvat's life. He was a popular "people's doctor" and had worked in Soweto for about 15 years, frequently coming into conflict with the authorities. 2/

(c) On 14 April 1989, Mr. Chris Thandazani Ntuli (30), an organizer for the Natal Youth Congress, was killed, just 10 days after his release from detention, as he was returning to his home from the Inanda police station where he was compelled to report twice a day under the terms of his restriction order. 3/

(d) On 19 April 1989, Tom Sekina, an ANC spokesman, announced that two ANC members, farm manager Sadham Naidoo and mechanic Mos Thole, had been shot and killed on 15 April 1989 at a farm near Lusaka, Zambia. Mr. Sekina reportedly said that the ANC had not discounted the possibility that the slayings were political. 4/

(e) Stephen Manonye (28) was reported to have been beaten to death in 1988 by two white farmers, Louis Venter and Piet Fonche, at Orkney in Western Transvaal, after they had accused him of stealing cattle. Mononye died of brain haemorrhage as a result of the assault. In their trial before the magistrate at Klerksdorp in mid-April 1989, they were found guilty of assault and sentenced to fines of R1,200 each or four months in jail, and to six months suspended for five years. Initially they had pleaded not guilty to the charge of culpable homicide, but both changed their plea to guilty of assault. 5/

(f) It was widely reported that David Webster, a 44-year old university lecturer and civil rights campaigner, was gunned down by unknown assailants outside his home on 1 May 1989. He had been active in the campaign against detention without trial and was the country's leading authority on death squads, having reportedly just completed a report on "informal repression" in South Africa. It was reported that the 20-page document, due to be published, studied "dirty tricks squads, vigilantes, death squads and surrogate forces", and concluded that "indiscriminate detention has given way to a more measured and targeted selection of victims". Mr. Webster's report was allegedly an academic treatise, not an investigation. Its genesis lay in the murder of Webster's close friend, Rick Turner, in 1978. Webster began to study the pattern of such killings and found that, invariably, police files were closed, with killers identified only as "person or persons unknown". Webster compiled figures which showed that, since Turner's death, 60 activists had been assassinated. In only one of those cases was there a prosecution, and a group of local security policemen was jailed. Another five activists reportedly have disappeared without trace since 1980. Of 113 attacks against anti-apartheid targets over the past four years, not a single prosecution has resulted.

(g) On 16 August 1989, the prominent black anti-apartheid activist, Eric Gumeda (27), who had been released from detention on 11 August 1989 after a hunger strike, reportedly died in hospital. Mr. Gumeda was allegedly shot by unknown attackers at his home in the Kwamashu black township on the outskirts of Durban on 15 August 1989. The police said that they were investigating.

(h) More than 60 persons, mostly African National Congress (ANC) members and sympathizers, have been assassinated outside South Africa in the past decade, many in neighbouring States.

(i) It was reported in the Independent of 17, 20, 21 and 22 November 1989 that a former official in the security police, Captain Dirk Johannes Coetzee (44), had confessed to having headed a special death squad, formed under orders from the country's highest ranking police officers, to eliminate enemies of the Government. He reportedly revealed detailed information of a police-run terror network, operating both inside and outside the country. This information had emerged from an interview conducted by Mr. Jacques Pauwon of Vrye Weekblad, a weekly Afrikaans-language newspaper based in Johannesburg. Capt. Coetzee described the methods used in various operations and killings, and reportedly admitted knowledge of, or direct responsibility for, 10 assassinations as well as various attempted killings, kidnappings and bombings. These included references to the assassinations of Mr. Griffiths Mxenge and his wife, Victoria, both activists and lawyers; Mrs. Ruth First, wife of the Secretary-General of the Communist Party of

South Africa; and Mr. Patrick Meku, also an activist. Capt. Coetzee's admissions followed on an affidavit signed by a death row prisoner and former policeman, Mr. Almond Nofomela, who claimed that he had been part of a police murder unit. Mr. David Tshikalanga also claimed to have worked under Captain Coetzee, and confirmed that, together with Mr. Nofomela, he had been part of a four-man team which carried out the fatal stabbing of Mr. Mxenge.

(j) It was reported that Capt. Coetzee claimed to have headed a plain clothes, underground death squad from 1980 to 1982. In the interview, he related how captured ANC guerrillas had been made to "disappear"; their bodies were burned to ashes after being shot at point-blank range with Russian-made pistols. He also described how ex-ANC guerrillas, known as "Askaris", had been forced to switch allegiance and turned into killers. He further identified a police-owned farm near Pretoria, known as Vlakplaas, as the operations and training centre for his hit team, which had been one of five such units. Police headquarters in Pretoria acknowledged the existence of a special anti-terrorism unit, known as the "Askaris" or "A-team", but denied that members had been involved in assassinations or other illegal activities. The opposition Democratic Party and several anti-apartheid groups demanded that a panel of jurists with subpoena powers be convened to replace an investigative police team which had been named when the above-mentioned allegations had first been made. The International Herald Tribune of 29 November 1989 reported that President Frederik W. de Klerk had decided to dismantle the national security management system, including the State Security Council. His decision appeared to have reinstated the civilian-dominated cabinet as the highest policy-making authority in the field of State security.

31. Other cases of death under suspicious circumstances are mentioned in paragraphs 33, 34 and 35.

B. Capital punishment and execution

32. On the basis of information received, the Ad Hoc Working Group noted with great concern the increasing number of death sentences imposed in politically related cases. In a document dated February 1989 submitted to the Working Group by Amnesty International, it is stated that South Africa has one of the highest rates of judicial executions in the world. Executions have exceeded 100 a year in recent years. The percentage of death sentences commuted by the authorities has declined. Death sentences are imposed disproportionately on the black population by an almost entirely white judiciary, with 97 per cent of the 1,070 people hanged in South Africa between 1980 and 1988 being black. According to the same source, no black person, with the exception of one judge in the so-called independent "homeland" of Bophuthatswana, has ever been appointed judge or assessor in South Africa. While more than 90 black defendants have been charged for the rape of white victims, no white man has been charged for raping a black woman, except if the victim was also murdered.

33. According to the Johannesburg Human Rights Centre "it would seem our courts regard the racial element in a white-against-black crime as an extenuating circumstance and in a black-against-white crime as an aggravating circumstance". South African lawyers have criticized the inadequacies of the legal aid system, the lack of automatic right of appeal (see para. 102), and other procedural issues which prejudice the position of poor, mostly black

defendants. Legal defence for such persons is often a court-appointed pro deo counsel (i.e. the most junior and generally least experienced counsel), with no attorney available to prepare in advance for the trial. There is generally a lack of funding for expert witnesses to be called in mitigation, especially in cases involving pro deo counsel.

34. According to information transmitted to the Working Group by Amnesty International, it would appear that most South Africans sentenced to death have been convicted of murder. A smaller number have been sentenced to death for rape, robbery, housebreaking, kidnapping with aggravating circumstances, treason or "terrorism" as broadly defined under the 1982 Internal Security Act (ISA).

35. The death penalty is mandatory for those convicted of murder in South Africa unless the court accepts defence arguments that there were extenuating circumstances. In a report submitted to the Working Group by Black Sash, the death penalty is increasingly imposed at political trials or trials for politically related killings. This occurred most recently in the case of the "Upington 26", 14 of whom were sentenced to death in May 1989, and the "Bisho 16" in the so-called independent "homeland" of the Ciskei, of whom 12 were sentenced to death in June 1989. Defendants in these cases are often held incommunicado for long periods before being brought to trial; some have been physically tortured, and statements they or others have made during prolonged periods of incommunicado detention often form the basis of the prosecution's evidence against them.

36. The list below shows executions reported from 1 January to 4 October 1989.

Name	Date
Bakiri Nelson	13/01
Johannes Mangate	13/01
Joseph Letsiri	09/03
Benfisius Sekgothe	09/03
David Themba Kekana	13/03
Jacobus Konzie	14/03
Raymond Shozi	14/03
Joseph Madonsela	17/03
Jabulani Nkosi	17/03
M. B. Ngcobo	15/04
Ndumiso Silo Siphenuka	20/04
Makhezwana Menze	20/04
Mlandeli Bobby Lesiti	25/04
Mxolisi Barnse	25/04
Leonard Adriaanse	25/04
Paulus Dube	26/04
Buthi Mokoena	26/04
David Millar	26/04
Raymond Ntshangase	26/04
Anton Koen	24/05
James Henry Cohen	24/05
Simon Mbatha	25/05
Patrick Mosomi	25/05
Abraham Mngomezulu	25/05

Name	Date
Jassim Harris	02/06
Sandra Smith	02/06
Michael Erasmus	02/06
Jacob Ndaba	02/06
Mxolisi Isaac Tshongoyi	06/06
Keith Simmons	08/06
Thomas Sibisi	08/06
Solomon Mhlanga	08/06
Michael Morris	13/06
Uithaler Desmond	13/06
Joseph Lebeloane	18/07
Joseph Tsebana Manyane	18/07
Simon Tommy Selepe	18/07
Mangena Jeffrey Boesman	29/09
Alfred Ndlela	29/09
Stephen Mnchunu Khethokule	04/10
Samuel Mogohlo (or Mgotlo)	04/10
Alpheuy Thanta (or Thansa or Thantsane)	04/10

37. On 28 September 1989, at its forty-fourth session, the General Assembly of the United Nations passed resolution 44/1 calling upon the South African authorities as a matter of urgency to commute the death sentence imposed on Mr. Mangena Jeffrey Boesman, and urging all State organizations to use their influence and take urgent measures to save his life. The General Assembly also called upon the South African authorities to commute death sentences passed on all political prisoners as a means of creating an environment conducive to the peaceful resolution of the situation in South Africa. Nevertheless, he was executed on 29 September 1989.

C. Detention, including conditions of detention

38. Under the Public Safety Act 1953, the President of South Africa can declare a state of emergency and courts have no power to contest this. To maintain security of the State or public order, the President can legislate by means of "regulations", which must be tabled in Parliament within 14 days. It must be recalled that, prior to 1985, these powers were invoked only once, after the Sharpeville incidents in 1960.

39. Under Public Safety Amendment Act 1986, the need for the President to declare a state of emergency is superfluous, and the Minister of Law and Order is empowered to declare areas or even the whole country an area of unrest. The declaration of the Minister expires in three months, but is renewable indefinitely with the authorization of the President. The proclamation of a state of emergency automatically lapses after 12 months.

40. As mentioned in previous reports of the Working Group, successive states of emergency have been declared in 1985, 1986, 1987, 1988 and 1989, by means of proclamations.

41. The present state of emergency was renewed on 9 June 1989. All the laws previously enacted under the emergency therefore continue to be in force.

42. The Ad Hoc Working Group notes with deep concern that ill-treatment of prisoners continues. Under the present legal structures, it is very difficult to prevent this or to monitor the condition of prisoners.

43. The case of Rafiq Rohan, a Durban journalist, shows the kind of treatment meted out to defendants from the time they are taken into custody (see also chapter III B. Right to freedom of expression). Not only is there no access to lawyers or family members, but their ill-treatment, which may continue in the form of solitary confinement and long, pitiless interrogation, is preceded by severe beatings. Mr. Rohan was detained in mid-April 1989 under section 29 of the Internal Security Act, allegedly in connection with bomb blasts in that city. Deep concern was expressed for his health because, according to the police, he had "broken a leg during his arrest".

44. At the beginning of February 1989, detainees throughout South Africa staged a hunger-strike which lasted well into March 1989. This was a prominent feature of a mass protest carried out under extremely difficult circumstances. The widespread and concerted action on the part of the detainees, including escapes from hospital by striking prisoners, focused international attention on the plight of the hunger-strikers.

45. The number of prisoners actually released was the subject of conflicting reports. Although it was reported that a large number of detainees had been released in March 1989, in fact only about 630 were alleged to have been set free. Unfortunately, the majority of them were subject to draconian restriction orders. The following cases of Xolela Pillay Mdatyulva and Raymond Suttner are relevant:

(a) Under an order dated 3 April 1989, Xolela Pillay Mdatyulva, from Queenstown, is under house arrest for 20 hours out of every 24, and in the remaining 4 hours must report twice to a police station. His restrictions effectively prevent him from resuming his employment. He is also barred from taking part in the activities of 12 organizations, some of which were not in existence at the time of his detention.

(b) On 21 February 1989, it was reported that Mr. Raymond Suttner, lecturer in Law at the University of Witwatersrand, had been living under severe restriction orders for five months since his release from detention. He had spent more than two years in prison, 18 months of which in solitary confinement. The Minister of Law and Order has rejected the application made by Mr. Suttner's lawyer to relax the terms of his restriction. 6/ The National Association of Democratic Lawyers (NADEL) is quoted as stating that "the transfer of jurisdiction from the courts to the executive without spelling out criteria for evaluating the cases has created a serious legal uncertainty". 7/ The statement was made consequent upon the rejection of an application for relaxation of the very severe restrictions imposed on Mr. Suttner.

46. An analysis of the pattern of restriction orders imposed on released detainees 8/ shows that the restrictions are not used with the same rigour in all parts of the country. During the first three months of 1989, 55.7 per cent of all detainees released were restricted. However, while in Natal only 27.2 per cent of released detainees had restriction orders served on them, the figures in the PWV area and in the Eastern Cape were over 70 per cent.

47. At the beginning of 1989, according to figures compiled by Eastern Cape lawyers, branches of the Black Sash and the Detainees' Conference, at least 224 persons were known to be in detention in the Eastern Cape. This excludes detainees in the so-called independent "homelands" of Ciskei and Transkei. Of this number held under the emergency regulations, 90 (87 men and 3 women) had passed more than one year in detention without trial.

48. On 23 April 1989, the Minister of Law and Order informed the South African Parliament that 82 persons were being detained under section 29 of the 1982 Internal Security Act. Others were detained under similar legislation in the four so-called independent "homelands". On 15 June 1989, 170 persons were reported by the Human Rights Commission in Johannesburg to be detained without trial. Excluding those held in the so-called independent "homelands", 64 detainees were being held under state of emergency regulations. On 28 July 1989, the Johannesburg-based Human Rights Commission estimated that the total number held under the Internal Security Act and similar legislation in the four so-called independent "homelands" was 107. On 11 August 1989, the same Commission estimated that 148 persons were so detained. The provisions of the Internal Security Act allow a detainee to be held indefinitely in solitary confinement, for the purpose of interrogation, without access to anyone other than State officials. The jurisdiction of the courts over such detention is almost entirely excluded. There have been consistent allegations by detainees held under section 29 of torture and assault.

49. In addition to those held in custody, it was reported that, by mid-August, 680 persons were subjected to restriction orders imposed under state of emergency regulations. Many of those restricted had already spent long periods in detention. 9/

50. By the end of September 1989, the number of persons being held in detention without trial had risen to 441, the highest number since the beginning of April 1989. Those held include the following UDF members: Curnick Ndlovu, Titus Mafolo, Louis Mnguni, Trevor Manuel, Willie Hofmeyr, Joyce Mabudefhasi, Wilhelm Liebenberg, Sandy Smit, Mandla Dlamini and Ben Malondobozi. 10/

51. Also held are the following COSATU leaders: Amos Masondo, Evans Novunga, Ikaneng Matlele, Z. Sokwana, Shadrack Bongani and M. Hleko. Edward Mlondobuzi is being held in Venda. 11/

52. A total of 487 persons in South Africa are "listed" in terms of the Consolidated List published by the Government. They may not be quoted by the press. 12/

53. From 1948 to 1987, the Government banned 24 organizations, while in 1988 alone, a total of 32 organizations were restricted from carrying out their activities under the terms of the emergency regulations. The effect of emergency restrictions is to prohibit all activities of the organization save for administrative and legally-related functions. The exception to this is the restriction on COSATU, which prohibits it from performing a list of specified activities. This effectively prohibits it from doing any

"political" work, and restricts it to strictly "union-type" activities. Among the organizations restricted by the state of emergency regulations, 12 were youth movements. Also restricted, for the first time since the state of emergency was declared in 1985, were two right-wing organizations. 13/

54. As at 1 February 1989, 924 persons were in detention under the state of emergency regulations. The Human Rights Commission in Johannesburg has details of only 426, who were released between 1 February and 31 March 1989. The remainder, 498, were either still in detention or notification of their release had not been received.

55. The figures exclude 21 persons detained after 1 February 1989 and subsequently released, and 36 who were released but for whom detention dates were not known. It should be noted that there may be some overlap between these two groups.

56. It was brought to the notice of the Ad Hoc Working Group that Mr. Abdul Aziz Kader and Fr. Graham Cornelius suffered from post-traumatic stress disorder as a consequence of their detention. According to Lloyd Vogelman, a lecturer in Applied Psychology at the University of the Witwatersrand, who has worked extensively with detainees, once detainees are released they suffer from varying degrees of post-traumatic stress disorder. They experience both physical and psychological effects that become evident in the areas of eating, depression, loss of sleep and concentration. 14/

Education

57. It is alleged that many detainees are finding it increasingly difficult to gain readmission to educational institutions. A group of students, the Soweto Students Co-ordinating Committee, have alleged that many ex-detainees have been refused admission to a number of schools in Soweto, and inspectors have been accompanied by members of the security police on their routine inspections. 15/

D. Cases of torture and ill-treatment

58. The situation as regards torture in detention remains unchanged from that described by the Ad Hoc Working Group in its last report (E/CN.4/1989/8). Torture at police stations and after detention without charge was reported both in the press and in testimonies given by individuals to the Working Group during its last mission in London.

59. It should be recalled that there have been consistent allegations of torture by detainees held under section 29 of the Internal Security Act 1982. However, there is no way this can be questioned in the courts, because they have no jurisdiction over those detained under this Act.

60. At its 749th meeting in London, the Working Group was informed by a representative of ANC that detainees Levi Motseba, Edward Melinde, Tshifhiwe Marongo and Joseph Madlola had been brutally assaulted, subjected to electric shocks and pushed into pits where they fell a considerable distance before being caught by what felt like a net, which the victims were unable to see in the darkness.

61. The same witness further referred specifically to the case of Joseph Madlola, of Leeuwfontein, who reported the torture he had been subjected to because he was unable to identify or incriminate the persons in a list he was shown. According to Madlola, the group of detainees was kept in a stationary combi and called, one by one, to a tent nearby. He was forced to undress completely, was handcuffed to a pole and made to sit on the ground. A wet cloth was stuffed into his mouth and nose, and a wet canvas bag drawn over his head, so that he could hardly breathe. He was then given electric shocks to his private parts, the back of his neck, kidneys and later on his thighs, in fact practically all over his body. When he lost consciousness the canvas bag was removed. Later, when he regained consciousness the questions were repeated. After his release, it was reported that Madlola was still in pain and urinating blood, had difficulty in walking, and showed physical signs of the brutal assaults he had suffered. 16/

62. In addition, the representative of ANC reported the case of a Mrs. Abrahams, who was charged with terrorism and told a Johannesburg magistrate that while she was in solitary confinement a policeman had threatened to kill her if she refused to sign a confession. She described to the court how Warrant Officer Jeff Benzien burst into the room while she was being interrogated and told the other policemen that they should leave him to kill her. She agreed to sign a confession because she was afraid of staying in solitary confinement indefinitely. This was also reported in The Star of 27 July 1989.

63. Former Ciskei ambassador plenipotentiary for the Republic of South Africa, Douw Steyn was reported to have called for a Red Cross investigation into prison practices applied to detainees in all prisons of Ciskei. He expressed special concern for two detainees - his successor, V. Mafani, and Col. Vuyani Gende. Mafani allegedly saw Gende while in detention being severely beaten in the hope that he would implicate other policemen in the murder of Eric Mntonga of the Institute for Democratic Alternatives in South Africa (IDASA). 17/ In mid-March 1988, it was reported that six Ciskei police officers, including two generals, were jailed for the murder of Mr. Mntonga. During their trial, it became absolutely clear that torture and assault were common practice and a routine method of dealing with detainees. Observers reportedly felt that justice was not seen to be done, as the accused were convicted on the lesser charges of culpable homicide and defeating the ends of the justice. 18/

64. In an article on the responsibility of doctors towards detainees under the emergency laws, quoted in the Weekly Mail of 2 February 1989, Mr. David McQuaid-Mason, Professor of Law at the University of Natal, Durban, urged the Medical Association of South Africa (MASA) to co-operate with medical human rights organizations and issue clear instructions to its members concerning the treatment of detainees, particularly in regard to ethical problems relating to conditions of treatment and confidentiality. He further stated that MASA was "still equivocal" on crucial issues: it had not yet "officially denounced the policy of apartheid, or detention without trial, or the detention of children, even though it has acknowledged that some detainees have been seriously abused".

E. Deaths in detention and police custody

65. Information made available to the Working Group, as reflected in the following paragraphs, points to a continuation of cases of ill-treatment, violence and torture preceding the reported deaths.

66. On 13 February 1989, it was reported that Mr. Marks Lebelo, the presiding senior magistrate at Lebowa, found that some of the Lebowa police force on duty on 17 October 1985 at Bolobedu Police Station were responsible for the death of a student leader, Mr. Ngwako Frans Ramalepe, who died on 18 October 1985. He had been arrested the previous day, but his badly bruised body was picked up alongside the road outside the township late the same night. During the inquest, evidence was given that police had arrested Mr. Ramalepe and Mr. Robert Makokga at a shopping centre at Gra-kgapane township. After being taken to the local police station, they were allegedly assaulted by a group of at least 13 policemen. Mr. Makokga testified that he had been beaten with sjamboks, batons, rifle butts and booted feet. He further described how he had been suspended by his hands and feet while being assaulted. He said that Mr. Ramalepe had been treated in the same way. Later, they had been thrown into the back of a police van and driven out of the township. They had been dumped at the Leeuwkraal turn-off, as they were assumed to be dead. Mr. Ramalepe was later picked up and taken to hospital, where he died. Captain Rammutle testified in court that, after their arrest, the two men had been left unguarded in the yard with unlocked gates, as the police had had to go back to the township to deal with reports of "unrest". On their return, the two were missing; however, the escape from lawful custody was not recorded in the occurrence books and no search was launched by the police. In his summing up, Mr. Dikgang Moseneke informed the court that the Lebowa police had paid Mr. Makokge R5,000 in an out-of-court settlement of the lawsuit arising from the beating - an indication of acceptance of culpability. 19/

67. Concordant sources report on evidence given in May 1989 in the inquest into the death in police custody of Ashley Kriel, who was shot in July 1987. Warrant Officer Benzien, who fired the shot killing Kriel, testified that he "had not deliberately put pressure on the trigger". His evidence was refuted by a forensic expert, Dr. David Klatzow, who said his examination of the weapon indicated that the muzzle of the gun was not in contact with the deceased at the time it was fired. Benzien told the police that after his arrest, Kriel had broken free and tried to escape. He had "grabbed" him from behind and in the scuffle the shot had been fired. 20/

68. Warrant Officer Benzien denied that, on a pamphlet with the words "Freedom or death - Victory is certain", he had added, "Not for you", or that he had marked a photo of Ashley Kriel's face with a cross and had written "One down, ... to go".

69. On 9 June 1988, Stanza Bopape, an employee of the Community Resource and Information Centre, was reportedly detained together with a colleague. The police alleged that he had escaped three days later, but his family believe that he has been killed. In response to a question asked in Parliament by Jan Van Eck, the Minister of Law and Order replied that "all possible endeavours are being made to trace and rearrest this person". 21/

70. The Acting Commissioner of Police, Lt.-Gen. Johan Van der Merwe, announced that, following the release of the results of a post-mortem conducted on Daniel Qobolo, who died while in detention in connection with housebreaking charges, two members of the South African police are likely to be charged with murder. 22/ At the time of the adoption of its report, the Ad Hoc Working Group had not received information on the results of this inquiry.

71. On 23 January 1989, Patrick "Decks" Dakuse (36) was shot dead by police, who allege that he had tried to prime a hand grenade from an arms cache that he had taken them to see in Khayelitsha. Although the police claimed that they had charged him three days after he was detained on 17 January 1989, neither his family nor his lawyer was informed of his detention, where he was held, or of his forthcoming trial. 23/

72. On 21 April 1989, Dinana Mbetheni (21) was found hanging from an electric wire tied to a bar in his police cell in Alice, Ciskei. A Ciskei police liaison officer said that he had died while police were investigating circumstances surrounding an arson incident at Vukani High School in Ngewazi. 24/

F. Legal background and administration of justice

73. The South African Government has always sought to maintain a semblance of legality while ruthlessly suppressing opposition. As mentioned in the previous reports of the Ad Hoc Working Group, the emergency laws in force since 1986 play an important part in the armoury of apartheid laws already in force. As the militant opposition to the iniquitous legal structures created to suppress the black majority of persons in South Africa gathers momentum, the South African courts have become increasingly severe in imposing sentences.

74. As noted above, in murder cases where the court concludes that there are no extenuating circumstances the death penalty is mandatory. However, the death sentence may not be imposed on a woman convicted of murdering her newly-born child, on a woman who is pregnant or on a person who is under 18 at the time of the offence.

75. Defendants in capital cases are tried in the Supreme Court before a judge, with two assessors. Assessors, who are usually trained lawyers, participate in deciding questions of fact, such as whether there are aggravating or extenuating circumstances. The judge alone decides questions of law, and also has sole discretion over sentencing.

76. Those sentenced to death do not have an automatic right of appeal and must apply to the trial judge for leave to appeal against the verdict. In ruling on such applications, the judge must consider whether there is a "reasonable prospect" that the appeal court may reach a conclusion different from his.

77. If the judge denies leave to appeal, the convicted person may petition the Chief Justice for leave to appeal against the conviction and sentence. The Chief Justice can consider the petition himself or refer it to an appeal court judge. In either case, the decision is final. Except for the so-called

independent "homelands" of Ciskei, Transkei and Bophuthatswana, which have their own final courts of appeal, the Appellate Division of the Supreme Court in Bloemfontein is the final court of appeal.

78. A defendant whose appeal has failed can petition the State President for clemency. The State President is empowered to extend mercy and to commute a sentence of death to another punishment. He also can require the original trial court to examine new evidence which might affect the verdict.

79. The increasing number of executions, particularly for offences arising out of political protests, appears to have given renewed impetus to opposition to the death penalty. During the past year, religious, trade union and anti-apartheid organizations, human rights groups and members of the legal profession have spoken out against the death penalty. Some have expressed total opposition to the death penalty; others oppose its use for politically motivated crimes.

80. It was reported by Amnesty International in its Death Penalty Update of July 1989 that, among others, judges' voices have also been heard in calls for an end to the death penalty. In August 1988, at a meeting of law students in Durban, Mr. Justice Booysensaid is reported to have said that passing the death sentence was "the most chilling experience" of his life. He added that he had had to impose the death sentence twice in the previous two years. "If I had the choice", he said, "I would amend the Act so that I would never have to do it again; as long as it is part of the law I am obliged to." It has been reported that a number of senior barristers have refused positions on the bench because of their opposition to the death penalty.

81. The activities of several human rights organizations, such as the Society for the Abolition of the Death Penalty in South Africa and Black Sash, have resulted in publicity being given to cases of prisoners sentenced to death and whose execution has been scheduled although proper appeal procedures have not been followed or their petitions for clemency have never reached the State President.

Racial discrimination

82. As already mentioned above (para. 32), one of the most notable aspects of the use of the death penalty in South Africa is its disproportionate imposition on the black population (including persons officially described as "coloured") by an almost entirely white judiciary. In a report dated 2 October 1989, it was revealed that, of 39 persons executed, 29 were black, 8 coloured and 2 white. 25/

83. Research carried out in the late 1960s by Professor Barend van Niekerk of Natal University into the judiciary and racial bias in sentencing, as well as more recent research, strongly suggests that black defendants are more likely to receive the death penalty, especially when the victim is white.

Inadequacy of the Legal Aid System

84. According to information submitted to the Working Group by Amnesty International (753rd meeting), it would appear that, because of poverty, most black defendants appear before the courts unrepresented; the court will

appoint defence lawyers for defendants in capital cases, although this is not required by law. It was alleged that court-appointed barristers were usually the most junior members of the bar and were paid at a substantially lower rate than barristers hired by other accused. The fees received by court-appointed barristers allow only a minimum amount of time for consultation with the accused before trial begins, and do not permit the appointment of a solicitor who, in the South African legal system, is crucial to the proper preparation of the defendant's case.

85. In murder trials, the onus is on the accused to show that extenuating circumstances exist. Inexperienced court-appointed lawyers may be less competent to prepare this often crucial aspect of the accused's defence. The inability of most black persons to pay for their own defence lawyers jeopardizes their cases.

86. The Working Group noted with concern that, although all defendants have the right to petition the State President for clemency, the onus rests with the defendant to do so. There is no obligation on the courts to ensure that this right has been exercised. Because many poorer defendants have court-appointed lawyers who do not have a continuing responsibility for the defendant's case, there is a danger that this opportunity for seeking clemency may be missed. In a number of cases, human rights lawyers have discovered this omission only shortly before a prisoner was scheduled to be executed. It has been alleged that applications for a stay of execution, to permit time for a clemency petition to be lodged, have not been dealt with in a consistent manner by the courts. In some cases, a stay has been granted for this purpose, in others it has been refused.

87. Amnesty International brought before the Working Group the case of Michael Mnisi, who was executed on 4 October 1988. During his trial for murder he was represented by court-appointed defence counsel, who apparently did not apply for leave to appeal against the conviction and sentence, although Michael Mnisi had requested his counsel to do so. Human rights lawyers were alerted to his case after his execution had been scheduled for 4 October. They launched an urgent application in the Pretoria Supreme Court on 3 October for a stay of execution, on the grounds that Michael Mnisi had not exhausted all the legal remedies available to him. These legal remedies included the right to petition the Chief Justice for leave to appeal and, if this avenue failed, the right to petition the State President for clemency. The presiding judge, Judge Eloff, however, turned down the application for a stay of execution on the grounds that there were no prospects for success with a petition to the State President for clemency. In passing judgement on the possibility of Michael Mnisi's success with a clemency petition, Judge Eloff, who is Deputy Judge President of the Transvaal Province, appears to have exceeded his powers. With respect to clemency, the State President has unrestricted discretion. None the less, Michael Mnisi was executed.

88. It was further reported that, in addition to the disadvantages which result from having to rely on court-appointed barristers, black defendants are also disadvantaged by the fact that trials are conducted in one of the two official languages, English or Afrikaans, which are not the mother tongues of most black people. Having to rely on interpreters can often put black defendants at a serious disadvantage.

Application of "Common purpose" doctrine

89. Since the convictions handed down as a result of abusive application of the doctrine of "common purpose" in the case of the "Sharpeville Six" (see E/CN.4/1989/8, para. 157) and the increase in the number of death sentences handed down in political cases, the whole question of legal process is increasingly being questioned.

90. The doctrine of "common purpose", when abusively applied in criminal cases in South Africa, was widely criticized. As a result of an international outcry, the death sentences in the case of the "Sharpeville Six" were commuted to prison terms. However, the following cases, based on information provided by Amnesty International and International Defence and Aid Fund, show that the doctrine of "common purpose" has been abusively applied.

1. The case of the "Bisho 12"

91. On 6 June 1989, the Bisho Supreme Court of the Ciskei bantustan sentenced 12 men to death for their alleged participation in the killing of 5 men who had been abducted and burned to death in Mdantsane on 1 February 1987. Four other accused, who were under 18 at the time of the incident, were imprisoned for an effective 20 years.

92. The accused denied the charges and provided alibis. Although Justice J.W. Heath found nothing "inherently improbable" in this evidence, he preferred the testimony on behalf of the State. The main State witness, who had also been abducted but had survived the assault, contradicted himself. Evidence of identification by relatives of the dead men appeared doubtful, and evidence by the State did not directly implicate the majority of the 12 defendants. They were convicted on the basis of "common purpose".

93. The dead men were members of a gang who had killed a brother of four of the accused. Evidence in mitigation indicated that Mdatasane residents had no confidence in the efficiency of the bantustan police to deal with such cases. The role of the police following the killing was not explained satisfactorily at the trial. Certain evidence suggested that they had authorized civilians to arrest suspects. A key police witness contradicted himself several times.

94. The youngest man condemned is Bangikhaya Petros (20), who had his eighteenth birthday just one week before the alleged offence. Sentenced with him were Bonakele Jwambi (41), Mabongo Jamela (26), Luyanda Kana (27), Mseki Mbusi (27), Xolile Nkukwana (23), Soyiso Zuzani (22), Mbuyiselo Klaas (22), Mandlenkosi Jakavu (25), Mzwabantu Katsikatsi (24), Monwabisi Raymond Kana (32) and Thando Kana.

95. The following received 20-year prison terms: Wonke Faku (19), Alberet Retsh (20) and two youths under 18 years, therefore not named.

2. The "Upington 26"

96. On 27 April 1988, 14 of the 26 defendants in the "Upington 26" case were sentenced to death (see E/CN.4/1989/8, para. 166). On 8 September 1989, the Appeal Court in Bloemfontein granted leave to appeal against conviction

to 13 of them. All 14, including Justice Babeke (who, as a "principal offender", was refused leave to appeal) were granted leave to appeal against their death sentences. Of the other 12 defendants who were convicted but not sentenced to death, all except one, Elijah Majoba, were granted leave to appeal against sentence. Those granted leave to appeal were allowed it in the restricted sense that they might not contest the lower court's finding that they were part of a crowd at the deceased's house and had thrown stones at it. In this way they cannot argue that the alibis they put forward as part of their defence should not have been rejected by the lower court. They can, however, contest the finding that by their conduct they actively shared a common purpose to commit murder. The appeal is expected to be heard in 1990.

97. The murder for which the "Upington 26" were convicted took place on 13 November 1985 in the small town of Pabellelo, a black township of about 10,000 people outside the white town of Upington, Northern Cape. The murder occurred after security forces had broken up a protest meeting of some 5,000 people. A crowd of about 300 then stoned the home of a municipal police officer, Lucas Tshemolo "Jetta" Sethwela. Sethwela was chased from the house by the crowd, and an hour later was killed by two bullets and blows with his own firearm. His body was then set alight.

98. Only one defendant, Justice Bebeke, was found guilty of delivery of the fatal blows which killed Sethwela. The other 13 condemned to death were convicted of sharing a "common purpose" with him. The judge concluded that, in helping to chase Sethwela out of his house, the stone-throwers were aware that he would be killed and were therefore responsible for his death.

Discrimination in the application of the law

99. It was reported that, when an Indian family tried to move into a house in Mayfair West, the local white residents forcibly prevented them from doing so. 26/ Lawyers for Human Rights called upon the Minister of Law and Order, the Commissioner of Police and the Attorney-General of the Transvaal to explain why the "lynch mob" had not been arrested for terrorism and subversion. Mr. Brian Currin, the national director of Lawyers for Human Rights, said: "Section 54.G of the Internal Security Act provides, inter alia, that any person who, with the intent to put fear or demoralize the general public, a particular population group or the inhabitants of a particular area, commits an act of violence, is guilty of terrorism. If simultaneously such a person causes, encourages or foments feelings of hostility between different population groups or parts of population groups, that person is guilty of subversion." However, no arrests had yet been made.

100. The analysis of the foregoing has led the Ad Hoc Working Group to the following reflections. The Working Group notes that the case of the "Upington 26", although monitored already, has not received the same amount of attention, while the case of the "Bisho 12" in Ciskei has gone almost unnoticed. Herein lies the danger of legal entrenchment of principles inherently wrong and unjust, but powerful once institutionalized. Every time there is a crime in the course of a protest, everyone present in the vicinity will be deemed to have committed it - an extraordinary principle to be enacted as part of the criminal law of any country.

101. In addition to the criticism that can be levelled against South Africa's criminal procedure in respect of convictions based on the doctrine of "common purpose", it has been reported that almost all convictions rely on statements obtained from both defendants and witnesses under some kind of coercion. The use of preventive detention and solitary confinement, and the torture of potential witnesses, appear to be frequently essential to the State's case in political trials. Convictions in these circumstances are unreliable and unfair. The lack of a jury and of an automatic right of appeal against sentence further aggravates the situation, and trials for capital offences become a mere mockery of justice.

102. As has already been pointed out, another criticism of the legal system of South Africa in criminal cases is the apparent lack of an automatic right to appeal, especially in murder cases. As the right is not automatic, the first application has to be made to the trial judge. If he refuses, a petition can be addressed to the Chief Justice. If leave is refused by the Chief Justice, then the only hope that remains for the convicted and sentenced person is to appeal to the State President for clemency. On many occasions, the possibility of petitioning for a reprieve by the State President is not known to the convicted person. If appeal is allowed, the Supreme Court of Bloemfontein hears it. Its decision is final.

G. Political trials

103. On 11 January 1989, 12 alleged members of the African National Congress (ANC) who had reportedly shot dead three policemen and a one-year-old girl in Atteridgeville in 1988 were charged, inter alia, with treason, murder, attempted murder, unlawful possession of explosives and conspiracy to overthrow the Government. It was reported that bail was refused on the basis of a certificate opposing bail submitted by the Attorney-General. The accused, who included political activists, are: Moeketsi Ronny Toka (25) of Mamelodi; Godfrey Velaphi Mokube (41) of Bloemfontein; Francis Pitse (24), Ernest Thoboki Ramadike (24), George Mathe (21) and Johannes Maleka (25), all of Atteridgeville; and Peter Maluleka (34), Phuti Bernard Mokgonyana (26), Joseph Nkosi (39), Thapelo Reuben Khotsa (23), Reginald Noha Legodi (22) and Alfred James Kagasi (25), all of Mamelodi. 27/

104. Towards the end of January 1989, Justice K. Van Dijkhorst, the trial judge in the case of 11 men convicted in the "Delmas" treason trial, granted leave to appeal against conviction. It was reported that the conviction was challenged on the basis of irregularities during the trial, which included the dismissal of a secret affidavit by Prof. J.A. Joubert containing startling allegations of conversations and events in the judge's chambers while Prof. Joubert was still on the bench with Justice Van Dijkhorst (Prof. Joubert had been dismissed because he had signed the United Democratic Front's "Million Signatures" campaign). Other alleged irregularities included frequent and unnecessary interventions by the trial judge, which were prejudicial to the accused, and interventions of a leading nature. 28/

105. In the last week of January 1989, D.M. de Lange, former Rand Daily Mail journalist, I.H. Robertson and Susan Donnelly, known as the "Broederstroom three", were charged with 23 counts of terrorism in a Pretoria magistrate's court. D.M. de Lange also reportedly faces an additional charge of arson.

106. It was reported in the Human Rights Update of July 1989 (vol. 2, No. 2) that the following trials had been initiated on charges of treason:

Ongoing, Zwelitsha Magistrate's Court

GENDA, Vuyani

1 August, Delmas Circuit Court

TOKA, Moeketsi
PITSE, Francis
RAMADITE, Ernest
MATHE, George
MALEKA, Johannes
MALULEKA, Peter
MOKGONYANA, Phuti
NKOSI, Joseph
KHOTSA, Thapelo
LEGODI, Reginald
KGASI, Alfred
MOKUBE, Godfrey

1 August, Rand Supreme Court

MOKATI, Edward

7 August, Mmabatho Supreme Court
(for mitigation and sentence after being convicted of treason on 16 June 1989)

MAHILA, Lawrence
MATABOGE, Frans
MEREYOTLHE, Hunter
BOPALAMO, Solomon
MATABOGE, William
MOTSWATSWA, Shadrack

7 August, Mmabatho Supreme Court (continued)

MORAKE, Abram
and one other

16 October, Mmabatho Supreme Court
(for judgement)

BANDA, P. and 142 others.

107. It was further reported that, under the Internal Security Act and other Acts, about 60 trials for terrorism, possession of firearms, contravention of restriction orders, and contravening the Group Areas Act, inter alia, were continuing in Transvaal, 58 in Orange Free State, 50 in Western Cape, 14 in Eastern Cape, 7 in Bophuthatswana, 11 in Transkei and 2 in Ciskei.

108. In addition, it was reported that, of the 274 persons on death row, 88 had been tried on politically related charges.

Chapter II

APARTHEID, INCLUDING BANTUSTANIZATION AND FORCED POPULATION REMOVALS

A. Apartheid

109. An analysis of the information received by the Ad Hoc Working Group of Experts during the period under review shows that the Government of South Africa remains committed to the policy of apartheid. The Working Group notes with dismay the attempts of the Government to strengthen apartheid rule further through legislation, as illustrated by the following instances.

110. Although the Government has apparently abandoned tough new measures to preserve residential segregation, it has indicated that it would be exploring fresh ways of enabling communities to preserve their racial purity if they wished. The announcement was made by the acting State President, Mr. Chris Heunis. The new amendments to the Group Areas Act provide for huge fines and confiscation of property for breaches of the colour bar. 1/

111. It is reported that only the State President's signature is needed for the Prevention of Illegal Squatting Act Amendment Bill to become law. It looms over the future of some 9 million people, and is described by the National Committee Against Removals as "a monstrous piece of legislation", extending as it will the sweeping powers of local authorities and landowners, and further limiting the discretion of the courts. The legislation allows farm workers to be on the land only so long as as they are employed by the farmer. Dependants and retired farm workers are classified as squatters. Section 3B(1)(a) of the Illegal Squatting Act allows a landowner to demolish, without a court order, anything built on his land without his consent. Section 3B(4)(a), the ouster clause, prevents persons whose property is thus being demolished from seeking relief in the courts - and prevents the courts from granting such relief - unless they can prove that they are lawful occupants. 2/

112. In this respect, two recent cases (Vena and Another v. the George Municipality, 1987, and Joseph Luwala and Others v. the Port Nolloth Municipality) are noteworthy. In the first case, the local authority was ordered to rebuild a room it had torn down. In the second case, the municipality was restrained from removing tents or demolishing buildings occupied by Luwala and other squatters. According to Kate O'Regan, a senior researcher at the Labour Law Unit of the University of Cape Town, this seems to have curbed slightly landowners' rights of summary demolition.

113. The representative of the Human Rights Commission of South Africa, Mr. Max Coleman, informed the Working Group (754th meeting) that the Disclosure of Foreign Funding Bill had become law as of 18 August 1989. The sweeping provisions of the new Act will enable the State, armed with powers of search, seizure of documents, and interrogation of organization officials, to gather vast amounts of confidential information. The new Act makes no specific reference to curbing political activity but, by shifting the emphasis from control of funds to disclosure of their sources and details of how the

money is used, it appears quite innocuous compared to the previous one. This Act replaces the Orderly Internal Politics Bill, which was designed to curb foreign funds coming into the country; it was withdrawn as a result of unprecedented national and international pressure (see E/CN.4/1989/8, paras. 501 to 506).

B. Opposition to the policy of apartheid

114. International criticism is having an increasing effect on the system of apartheid in South Africa at all levels. There is an increasing awareness of the intrinsic injustice of the system, and diehard institutions and church groups like the Nederduits Gerefonremeerde Kerk (NGK) are beginning to reconsider some of their most fundamental beliefs. Thus, leaders of South Africa's biggest Afrikaner church were scheduled to meet in Pretoria in mid-March 1989, to denounce apartheid, the policy which the "whites only" church had helped to formulate 40 years ago. It should be recalled that, for more than 40 years, until doubts were voiced in the early 1980s, the NGK had supported the Government's race policies and taught that apartheid was ordained by God. The Church was suspended in 1983 from the 50 million-member World Alliance of Reformed Churches headed by Allan Boesak, a veteran non-white opponent of apartheid. 3/

115. It was reported in the International Herald Tribune of 14 September 1989 that more than 20,000 racially mixed anti-Government protesters filled Cape Town's main thoroughfare on 13 September 1989, in one of the largest mass marches ever held in South Africa. It was also the only march in recent years to have received an official Government waiver of more than a dozen state-of-emergency regulations under which it could have been banned in advance or forcibly broken up once started. The mayor of the city of Cape Town and a large number of councillors also participated. (The last legal march of comparable size was in 1959, when 25,000 women demonstrated against the old pass laws for blacks. Since the state of emergency was imposed in June 1986, all demonstrations of political dissent have been illegal.)

116. Archbishop Tutu and other anti-apartheid leaders blamed the police for the deaths of at least 23 persons in Cape Town's mixed-race townships on election night. Their assertions were supported by Lt. Gregory Rockman, a mixed-race policeman, who accused white police officers of brutally suppressing an election protest in his neighbourhood of Mitchell's Plain.

117. The Working Group noted that opposition to apartheid rule within the country was gathering strength as anti-apartheid activities were undertaken at all levels. Developments in this direction range from humanitarian organizations to legal commissions set up to examine law reforms, and extend to church groups, trade unions and student organizations. Even young white South Africans have started protesting by campaigning against conscription, since they believe that joining the South African Defence Force will lead them inevitably to enforce the unjust system of apartheid.

118. In a nearly 500-page working paper released on 11 March 1989, the South African Law Commission has submitted a Bill of Rights which recommends, inter alia, that all discriminatory laws, like the Group Areas Act and the

Population Registration Act and laws allowing prolonged preventive detention without trial or charge, be abolished. The Bill advocates universal franchise, thus giving black South Africans the possibility of voting for the first time. A penalty is imposed on those guilty of discrimination on the basis of race, religion, language or culture, and no public or State funds are to be granted to promote the interests of those who discriminate. The Bill also provides that group rights can be protected only through individual rights. 3/ After negotiation, the Bill is to be introduced in five phases. 4/

119. Carletonville, 40 miles west of Johannesburg, is one of the municipalities where the extreme right Conservative Party gained control on pledges of restoring white supremacy. In October 1988, the municipality set up "whites only" signs on the grass outside its offices and in two other parks, and was reportedly considering a dusk-to-dawn curfew on blacks, in a campaign to reimpose the strict segregation of 1950s style apartheid. On 28 February 1989, the black township of Khutsong, near Carletonville, retaliated by a boycott of white business in Carletonville, following the example of the boycott measures adopted by blacks in Bokburg. For the first time, the protest was organized by the country's biggest federation of black trade unions - the Congress of South African Trade Unions (COSATU) - with the active support of the National Union of Mineworkers (NUM). The Separate Amenities Act, 1953, although ignored by the Government, has not yet been repealed. The white business owners were severely affected by the boycott. The Association of Chambers of Commerce and the local white businessmen's committee condemned the actions of the municipality. In a landmark decision on 31 August 1989, the Pretoria Supreme Court ordered that the "whites only" signs be removed from public parks in Carletonville. Mr. Justice Eloff ruled that erecting the signs was so harsh and unfair as to bring him to the conclusion that the town council had failed to act in good faith. 5/

120. The Mass Democratic Movement, a coalition of banned anti-apartheid organizations, was launched on 26 July 1989. The object of this movement is to demonstrate peacefully, and to break laws dealing with petty apartheid. On 2 August 1989, 270 black patients successfully demanded treatment in selected white hospitals in the Johannesburg area. A visit to the "blacks only" hospital for someone like Patricia Khumalo of KwaMashu would take the whole day. She would leave her home in the Natal township at 5 a.m. for King Edward Hospital, stand in interminable queues before being treated, and get home exhausted, late in the afternoon. On 2 August 1989, however, she rose just before 8 a.m. and barely two hours later was being treated at the "whites only" Addington Hospital. The peaceful and orderly protest at the eight hospitals in Natal and Transvaal was conducted without incident. 6/ For details of discriminatory practices in the provision of health care, see chapter III, paragraphs 166 and 167.

121. The Mass Democratic Movement continued to protest by bathing at "whites only" beaches, singing freedom songs on trains, picnicking in "whites only" parks and boarding "whites only" buses. The Rev. Gidean Makhanya was one of 13 persons arrested after attempting to board a segregated bus in Pretoria. White University lecturers appeared on campuses wearing prohibited T-shirts with UDF slogans. Anti-apartheid activists appeared at protest rallies and held press conferences to announce that they were "unbanning" themselves, although they were officially prohibited from engaging in political activities.

122. As the non-violent anti-apartheid campaign intensified over a period of two weeks, the South African police cracked down on the protesters, driving blacks off beaches reserved for whites near Cape Town, firing shot guns and tear-gas at protesters in a black township in Johannesburg, and breaking up demonstrations in Durban and Johannesburg. 7/ The most violent action reportedly took place when the police dispersed hundreds of peaceful black demonstrators who streamed on to segregated beaches outside Cape Town on 19 August 1989. Police used batons and whips to beat them back. Police dogs and their handlers landed on one beach from a helicopter and swooped down on the panic-stricken crowds. 8/

123. On 6 September 1989, election day, there was a widespread stay-away and boycott of the segregated elections. It was widely reported that at least 23 persons were killed and about 100 injured when police opened fire and attacked the civilian population pursuing peaceful occupations. Among those injured were children in their backyards or out on a shopping errand. Lt. Gregory Rockman (30), a coloured official of the crime-prevention unit at Mitchell's Plain, condemned the white policemen who attacked people on election day, including children and old people. According to reports submitted to the Working Group, Lt. Rockman had given 20 minutes to the demonstrators to disperse peacefully but, 10 minutes before the deadline, the white policemen opened fire and dispersed the crowd in a most brutal manner. An official inquiry was scheduled to be held to examine Lt. Rockman's allegations of excessive and unnecessary brutality by the police. The public condemnation of police violence in this incident may jeopardize Lt. Rockman's 12-year career in the police force. A senior officer of mixed race, Col. Johann Manuel, joined Lt. Rockman in his criticism of the riot police. 9/

124. It was reported on 13 October 1989 that, in pursuance of an inquiry into this matter, Major Charles Brazelle and Lt. David Roos had been found not guilty of ordering their squads to use excessive violence against anti-apartheid protestors. However, the court had expressed astonishment that the members of Lt. Roos' patrol had gone unpunished, although it was clear that they had beaten a number of civilians. 10/

125. It was reported in The Times of 1 November 1989 that Lt. Gregory Rockman had been posted to another part of the country and had been told that disciplinary action would be taken against him for refusing to sign a receipt for an order forbidding him to give information about the police force without prior clearance. The Guardian of 14 November 1989 reported that Lt. Rockman had been arrested together with another police officer and 11 prison guards for participating in an illegal meeting. All 13 had been released without bail after brief court appearances, where they had not been charged. They had been scheduled to reappear on 23 November 1989. The dissident security officers had been protesting in Mitchell's Plain, Lt. Rockman's home town, against police orders to transfer him to a quartermaster's unit in a white area of Cape Town. The police had also ordered the transfer of Col. John Manuel, the commander of the Mitchell's Plain police station, who had supported Lt. Rockman. To date, no further information on this case has been received by the Working Group.

126. The use of whips to break up demonstrations will reportedly no longer be permitted "because the use of quirts (whips) has resulted in negative reaction from the public and also internationally". 11/

127. It was noted by the Working Group that many young white South Africans chose to go to prison rather than join the SADF as part of their military service. This was confirmed by a report stating that Saul Batzofin was sentenced to 18 months' imprisonment for refusing to do military service. David Bruce, Charles Bester and Ivan Tomas were also given prison terms in similar circumstances. 12/

128. The Working Group further noted that young white South Africans are increasingly voicing opposition to the system of apartheid. The representative of the Committee on South African War Resistance informed the Working Group (751st meeting) that large numbers of young South Africans failed to report when they were called up to serve in the South African Defence Force (SADF). He stated that approximately 3,500 persons failed to present themselves for military service every year. The vast majority of them did so because they objected to the policy of apartheid. The witness further testified that most of those who refused to do military service left the country. Others moved without leaving an address, thus making it difficult for the Government to trace them. A small minority refused to serve until eventually arrested, tried and sentenced to imprisonment.

129. While a large number of South Africans are resisting recruitment into the army, the Working Group noted with particular concern the testimony of the same witness when he alleged that approximately one third of the SADF was made up of individuals holding citizenship of the European Comunity.

130. According to recent information received by the Group, President F.W. de Klerk ordered the release of eight black leaders, including Mr. Walter Sisulu and six others who were defendants during the Rivonia trial when Mr. Nelson Mandela was tried.

131. Mr. de Klerk took another significant decision by relaxing the normal repressive measures and approving an application by pro-ANC leaders to hold a mass rally on 29 October 1989. The rally, which was addressed by Mr. Walter Sisulu, was attended by huge crowds. It took place without any incident and no attempts were made by the security forces to break it up. However, the Group considers that it is absolutely imperative that, inter alia, the state of emergency be lifted, all political prisoners be released, all political organizations including the ANC be unbanned, and all apartheid legislation and policies be repealed, in order to create a favourable atmosphere for reconciliation in South Africa.

132. In spite of the foregoing and the opening up of beaches in white areas to blacks the Group is of the opinion that the main principles of apartheid legislation and policies remain intact.

C. Bantustanization and forced population removals

133. In earlier reports, the Working Group mentioned a number of examples of forced population removals. Despite the above-mentioned relaxation, the Working Group received information indicating that such removals are still taking place and causing great suffering among the black population.

134. In late April 1989, it was reported that, during a Cape Town conference on "Forced removals and the law", field workers and legal experts expressed the view that rural black communities were no longer faced with forced

removals. However, Pretoria was redrawing "homeland" boundaries. A new Bill, tabled in Parliament on 14 April 1989 (the Alteration of Boundaries of Self-Governing Territories Bill) seeks to preclude court actions previously brought by communities faced with incorporation into "homelands". The Bill has a clause which would validate retroactively all proclamations issued under the National States Constitution Act or any other law for the alteration of an area. In the opinion of Kate O'Regan of the Labour Law Unit of the University of Cape Town, the Bill appears to be a direct response to court decisions overturning Government proclamations incorporating Moutse into KwaNdebele and Botshabelo into QwaQwa. The decision to incorporate Moutse's more than 120,000 mainly Northern Sotho-speaking people into the reportedly underdeveloped, overcrowded KwaNdebele "homeland" was reversed by the Appeal Court on 21 March 1988 (see E/CN.4/1989/8, paras. 361 to 367). It found that the purpose of the National States Constitution Act was to unite people of similar ethnic groupings and that the State could not hide behind the excuse that it was incorporating the community for "administrative reasons". A commission was appointed to investigate the future of the area. Moutse has long been of interest to different "homelands": in 1968 it was part of Lebowa but was returned to the central Government in 1980. Then the dispute over incorporation arose in 1985, when the Lebowa government tried but failed to have the area re-incorporated into the "homeland". A similar argument was successfully preferred in court in 1988 when attempts were made to incorporate Botshabelo, which lies 55 km from Bloemfontein, into tiny, impoverished QwaQwa, more than 300 km away on the northern Lesotho border.

135. It was reported that a legal challenge to incorporation came from residents of the Western Transvaal settlement of Braklaagte, who opposed incorporation into Bophuthatswana under the Borders of Particular States Act. The community's challenge failed and they were effectively exiled, but without being removed. The Working Group was informed that the community's lawyer, Johannesburg attorney Clive Plasket, emphasized the difficulty in challenging proclamations issued under the Borders of Particular States Act. No objective criteria had to be met, which made the Act less open to judicial scrutiny and thus more difficult to attack. Legal challenges to incorporation usually amounted to a desperate last stand, according to Mr. Plasket, and even this will no longer be possible if the new Bill is enacted. 13/

136. On 20 April 1989, more than 30 Tokora squatter families, including children, were reported to have spent a bitter night out in the cold after a contingent of municipal policemen demolished their sheds in Area 6, commonly called Ditankeng. A municipal official reportedly confirmed the demolition of sheds in that area and said that the squatter families had been given written notice to move out of the area within 24 hours. The area had already been allocated to a developer for the purpose of building houses there. 14/

137. On 2 May 1989, the small Magopa tribe, forcibly removed from its ancestral land in 1984 under South Africa's segregationist laws, failed in a legal action to win back the land. Tribal members who had drifted back to their homes were reportedly given seven days to leave. In regard to the removal of the Magopa tribe, the Working Group has had occasion in previous reports to emphasize the dimensions this affair had assumed, inter alia, at the international level. 15/

138. The Ad Hoc Working Group noted with consternation the continuing vigilante attacks in the Ciskei and police atrocities in Bophuthatswana, as reported in the following two cases.

139. Residents of Potsdam, near Mdantsame in Ciskei, resorted to yet another mass exodus in order to establish their right to live in South Africa. On 11 April 1989, over 200 refugees moved across the border to camp on an empty farm in South Africa owned by the Department of Development Aid. The flight was reportedly sparked off by a vigilante attack on the community. It was their third attempt in 18 months to leave Ciskei. In January 1989, the Grahamstown Supreme Court granted Potsdam residents the right to live in South Africa and not be forcibly moved to Ciskei. The court took into account the fact that the applicants were South African citizens and had lived in South Africa before being removed to Ciskei six years before. While the group was granted residence rights, they were not given a specific place to stay. In effect, this meant that they were still trapped in Ciskei while South African officials remained undecided. 16/

140. From 22 March 1989 for about a week, a contingent of Bophuthatswana police and army allegedly tortured villagers and carried out many arrests during pre-dawn raids in Braklagte, near Zeerust, in a revenge campaign. The 9,000-strong Braklagte village became a bone of contention on 24 December 1988, when lawyers acting on its behalf filed an urgent court interdict against South Africa's incorporating the village into Bophuthatswana. On 10 March 1989, the court ruled in favour of the Government and Braklagte fell within the jurisdiction of Bophuthatswana. The long-serving village chief, Babsy Sebogodi, was arrested in mid-March together with 65 other villagers on various charges. Residents claimed that 48 persons had been admitted to Lehurutse and Zeerust hospitals as a result of injuries sustained from being kicked and beaten with "sjamboks". 17/

141. Residents of a village forcibly thrown out of Ciskei several years ago narrowly escaped being incorporated into the territory in mid-January 1989, in a move to extend the "homeland's" boundaries. Some years ago, the residents of Needs Camp, on the Ciskei border, were trucked into South Africa because Ciskei authorities claimed they were ungovernable. The Camp was originally scheduled to be incorporated into Ciskei but was excluded from the transfer. Since then, its residents have been under a continual threat of physical removal from the area and reincorporation into Ciskei. 18/

Chapter III

RIGHT TO EDUCATION, FREEDOM OF EXPRESSION, FREEDOM OF MOVEMENT AND RIGHT TO HEALTH

A. Right to education

142. The Ad Hoc Working Group of Experts notes that the situation of black pupils in South Africa remains grim. It was widely reported that, at the beginning of 1989, a large number of students were turned away from schools, after they had failed their matriculation exams. They were told that places were limited, and those wishing to repeat could not be allowed to re-enter the school system. This created a problem for a large number of students who had failed their exams, often because of inadequate teaching and poor facilities due to a lack of funds. Although they were promised an alternative two-shift system in the evenings, the majority of these pupils could not be given places to study again for the matriculation exams. The "finishing schools" promised by the Department of Education and Training (DET) in six schools after normal hours were rejected universally by black students. The deadline of 1 February 1989 expired without the establishment of the promised schools. Lack of proper planning by DET and the return to Soweto of many students who left the township during the 1985 unrest are considered to be the major factors which contributed to the present situation.

143. During the period under review, the disparity in the educational facilities for black students as compared with white students continued to be glaring. It has been reported that official figures claim that the South African Government spends five times as much on each white child's education as compared with each black child. Whereas many white schools had a number of vacancies, thousands of black students went without schooling because there were no places in the black schools. In contrast to the severe shortage of places for black pupils, white schools were not even half full. Thus, it was reported that at Rosebank Primary School, Johannesburg, only one classroom was being used, and at nearby Parkhurst Primary School, at least five classrooms remained vacant. It may be noted that in early 1988, six State schools for whites had applied for permission to admit black pupils, but all had been refused. 1/ The following cases illustrate the situation of black pupils:

(a) A pre-school centre in Seshego was reported to be facing closure unless it could find sponsorship to assist with extra buildings. The Nelly Kgaka Pre-School in Zone 2 of the Northern Transvaal township was being accommodated at the local Presbyterian churchyard. The church had accommodated 223 children since its inception in 1983. Due to a severe shortage of space, even the equipment and toys to which they were entitled could not be received from the Government. Although a new site had already been acquired to build a proper school, lack of funds reportedly prevented implementation until parents could raise half the required amount of money, after which the Lebowa authorities would provide the rest. 2/

(b) Orlando West High, one of Soweto's oldest schools, was reported to have had no electricity for five years. Some 1,400 pupils (200 more than the permitted number) reportedly sat in unlit, overcrowded rooms. The lack of electricity rendered laboratories almost useless and ruled out the use of most

teaching aids such as slides or overhead projectors. It was further reported that the exclusion of approximately 3,000 young people from Soweto schools and the apparent cooling off of the boycott climate, had transformed the victims of Bantu education into a privileged group of scholars. The problem, it would appear, was not only the poor quality of facilities and teaching in the black schools, but the fact that there were a significant number of young people who were being refused access even to these facilities. Students who had participated in protest action or any peaceful anti-apartheid activities were often detained without charge. On their release, schools refused to take them back. Observers alleged that there were four categories of students who were excluded: those who had failed their matriculation exams, those who had failed their year twice, those who had fallen outside the official student age limit and lastly, ex-detainees. 3/ Under the Education and Training Act, the director general has the right to refuse admission to any pupil whose presence he deems prejudicial to the "provision of education". This provision is being used systematically to deprive students of their right to education by excluding them from schools after holding them in detention, without charge, thereby depriving them of their freedom and their right to be heard in a court of law.

B. Right to freedom of expression

144. On 9 June 1989, the South African Government renewed the nationwide state of emergency under Proclamation 85 of 1989, and severe curbs on the activities of local and foreign media were renewed (see also E/CN.4/1989/8 paras. 438 to 440).

145. These restrictions include a ban on photographs of unrest and action by the security forces, a ban on reporting of security force action, restricted meetings or community action such as boycotts and a ban on quoting members of "restricted" organizations. It was reported that up to August 1989 there were 34 organizations which had been restricted, including 18 human rights organizations restricted in February 1988. The media regulations also give authorities the power to seize publications or suspend them from publishing altogether. Although no suspension orders were in force at the end of October 1989, certain publications, like Al Qalam, Die Stem, South, Sowetan and Work in Progress had received warnings which eventually could lead to suspension and New Nation had five injunctions against it; its editor Zwelakhe Sisulu had spent two years in jail and since his release, was under severe restrictions. In the past, five publications had been suspended. They are: New Nation, South, Weekly Mail, Grassroots and New Era.

146. In his testimony before the Ad Hoc Working Group of Experts on southern Africa in London, Mr. A. White (746th meeting), representing the International Federation of Journalists (IFJ), referred to the joint IFJ/ICFTU delegation which visited South Africa in May 1989 to examine the effects of government media controls and the problems facing journalists who live and work in the shadow of censorship. The report of that mission was submitted to the Working Group. 4/

147. The same witness testified that the tendency towards official censorship had increased during the period under consideration, despite official statements suggesting that the country was moving steadily towards the establishment of a democratic cultural and political system.

148. It was alleged that the most persecuted newspaper in South Africa was Saamstan ("Stand together") a small community newspaper circulating out of Oudtshoorn, a rural community in the Southern Cape area. The offices of the paper had been bombed five times, its staff of five constantly harassed and attacked, and one of them had been shot. On one occasion the entire force of 24 distributors was detained. The newspaper circulates once a month in three languages - English, Afrikaans and Xhosa.

149. Some witnesses reported to the Working Group that the official policy of repression was supported by military and police interventions under regulations and existing statutes. It may be noted here that most of the major regulations and laws of social control introduced into South Africa since 1948 have contained restrictions on the freedom of reporting in South Africa. In his statement before the Working Group (746th meeting), the representative of the International Confederation of Free Trade Unions reported that there were more than 100 laws which restrict publication of news and information without prior official authorization.

150. Some recent examples of police intervention which the witness brought to the attention of the Working Group are as follows:

1. On 14 June 1989, 1,340 copies of the book Comrade Moss (concerning Moses Mayekiso, General Secretary of the National Union of Metalworkers) were seized from the Johannesburg offices of Learn and Teach publications.

2. On 29 June 1989, the police raided the offices of David Phillips in connection with the publication of a book entitled Getsha Buthelezi: Chief with a Double Agenda, which allegedly contained a quotation from a banned person.

3. At the end of June 1989, security police raid[illegible]udent residences and campus offices at the University of Witwatersrand. Books and other publications were confiscated to check whether banned material was among them.

151. There was a steady increase in attacks on the media and freedom of expression at all levels in society. The Anti-Censorship Action Group, based in Johannesburg, submitted to the Working Group an analysis of attacks on freedom of expression for the month of June 1989, to illustrate the extent of the problem. The following is an excerpt from its report:

> "1 June 1989: Police searched the offices of Crisis News, a Western Province Council of Churches newsletter, and confiscated at least 1,000 copies of the May issue. Two previous issues, in August and October last year, were confiscated. On the same day, the editor-in-chief of the Star, Harvey Tyson, was warned by police that he would be subpoenaed if he declined to name a source who leaked statistics on base metal exports. Tyson called it a 'blatant abuse of power and misuse of court procedure' and said he would go to jail rather than name the source. Further, it was reported that the Durban Supreme Court rejected an applicati[illegible] from awaiting-trial journalist Rafiq Rohan to prevent police from interrogating him. Rohan was facing charges under the Internal Security Act. Finally, Stellenbosch University expelled the local NUSAS president, Leslie Durr, for 'political reasons'.

The University also banned all NUSAS and Black Students of Stellenbosch (BSOS) activities until the end of September. The University said that Durr was expelled for her role in organizing and participating in a protest against racially segregated residences, in contravention of a ban on protest and marches on the campus that had been in force since 1985.

"2 June 1989: It was reported that police banned a meeting called to discuss violent clashes between police and pupils at Cape Town black schools. On the same day, eight people who had been arrested last November and charged with picketing against the closure of the Weekly Mail were informed that all charges against them had been dropped (see 28 June, below).

"4 June 1989: It was reported that the banned film The Stick was to be shown at the 1989 Moscow Film Festival.

"5 June 1989: The South African Broadcasting Corporation (SABC) claimed that although it did not have the authority to ban songs, there were about 1,000 titles which they refrained from playing, including the soundtrack of 'Cry Freedom'.

"6 June 1989: Former editor of South, Rashid Seria, appeared in court to face charges of contravening the 1987 emergency regulations. The case was remanded to 17 July 1989.

"7 June 1989: Ignatius Jacobs, restricted executive member of the South African Youth Congress, was arrested at his Riverlea home and taken to court to be charged with breaking his restriction order. He was released on R 1,000 bail and told to appear in court on 28 August 1989. On the same day, the Pretoria Supreme Court confirmed an interdict preventing Business Day from publishing a confidential letter from the Reserve Bank to commercial banks. The court also ruled that only the final paragraph of its judgement could be published. In addition, the South African Broadcasting Corporation responded to a challenge from the director of the Institute of Democratic Alternatives for South Africa (IDASA), Alex Boraine, to allow him to reply to allegations against IDASA made in an SABC radio commentary. Boraine claimed the interview was so badly edited that it distorted his views.

"8 June 1989: Namibian police raided the offices of The Namibian, confiscating a secret document containing minutes of a National Security Council meeting which the paper had published the previous week.

"9 June 1989: The Government reimposed the state of emergency for the fourth successive year, leaving media and other censorship regulations intact and re-imposing hundreds of restriction orders on individuals and organizations. However, new restriction orders served on, inter alia, African National Congress leader Govan Mbeki and United Democratic Front leaders Archie Gurede and Azhar Cachalia, were more stringent than their previous orders. The UDF leaders were effectively under house arrest. After an outcry about the restrictions, which disrupted the Natal peace talks, these two restriction orders were partially lifted.

"10 June 1989: In the latest in a long series of raids on the offices of the Media Workers Association of South Africa (MWASA), police arrested research officer Miranda Ebenezer. She was released two days later without being charged. Police also raided the offices of the Azanian People's Organization, the Azanian Students' Movement and the Azanian Youth Organization.

"11 June 1989: It was reported that President P.W. Botha tried to intervene directly in SABC-TV coverage, by objecting in a letter to the Director-General to the choice of three commentators on election night coverage last year. It was revealed that the then Director-General, Riaan Ecksteen, refused to alter the panel and was fired shortly afterwards. News editor Sakkie Burger, who remarked on television that the Conservative Party was doing well in the election, received a complaining phone call from Botha himself. Shortly afterwards, Burger was overlooked for promotion.

"12 June 1989: The final concert of the Voelvry tour of 'alternative' Afrikaans music, to take place in Verwoerdburg, near Pretoria, was cancelled on the grounds that the tour was 'ungodly, unchristian, and communist'. The tour was also banned from several Afrikaans campus venues. On the same day, police raided the offices of Saamstaan newspaper and seized 374 copies of the latest edition of the Oudtshoorn newspaper. The confiscation was in terms of the Criminal Procedure Act. In addition, the Citizen newspaper indicated it wanted to settle a Media Council hearing against it after the complainant, the Hunger Strike Support Committee, called Brigadier Leon Mellet, press secretary for the Law and Order Minister, to give evidence. The dispute centred around a Citizen report that Vlok would take action against the committee because it is a replacement for the banned Detainees' Parents Support Committee. Finally, the Government refused a passport to a journalist of the Press Trust of South Africa, Marimuthu Subramoney.

"15 June 1989: Responding to a court challenge to a restriction order, police said it was not unreasonable to keep former detainee Baba Dlamini under house arrest for 20 hours a day. The case continued. On the same day, police sealed off the students' union, several hostels and the nuclear physics centre at Witwatersrand University in a five-and-a-half hour raid, saying they were acting on 'information received' that the campus was being used 'to further the aims' of banned organizations and that plans were being made to disrupt the country on 16 June 1989. Students and university representatives condemned the banning.

"16 June 1989: Three Durban High School prefects 'detained' Professor Christine Lucia, a Black Sash member who had handed out pamphlets commemorating Soweto Day. They marched Professor Lucia to their headmaster, who ordered her off the property.

"20 June 1989: Police returned the passport of Rhodes University's Professor Peter Vale, which had been confiscated in July 1988 after an incident when he poured a glass of beer over the head of a security policeman in a Grahamstown bar.

"21 June 1989: Vrye Weekblad editor Max du Preez was convicted under the Internal Security Act for quoting Joe Slovo. He was sentenced to six months and suspended for five years. His publishing company was fined R 1,000, and also suspended for five years. Du Preez was cautioned and charged on four counts of publishing an unregistered newspaper. On the same day, the Johannesburg City Council supported the opening of cinemas on Sundays. In terms of the Sunday Observance Act, the final decision on an application by Ster-Kinekor rested with the Minister of Justice, Kobie Coetsee.

"27 June 1989: The Pretoria Supreme Court rejected an application to prevent Finans en Tegniek from publishing an allegedly 'highly defamatory' article about Pretoria businessman Ivan Kendrik Brownlees. The article accused Brownlees of trying to take over a company illegally. On the same day, the Justice Department refused Business Day permission to quote a speech by ANC President Oliver Tambo, and refused to give reasons for their decision.

"28 June 1989: The Attorney-General re-opened charges against eight persons arrested last November for picketing against the closure of the Weekly Mail. Previous charges against the eight had been dropped after four court appearances. They were charged with holding an illegal gathering under the Internal Security Act and were expected to appear on 18 September 1989. The eight were suing the State for wrongful arrest.

"30 June 1989: It was reported that police opened dockets against the Natal Witness, the New Nation, the Weekly Mail, South, Vrye Weekblad, the Sowetan and the Star. New Nation editor Gabu Tugwana said the police were signalling to the newspaper that although Home Affairs Minister Stoffel Botha was not acting against them, the police were keeping an eye on the publications."

152. On 5 October 1988, Velishwa Mhlawuli was detained under section 29 of the Internal Security Act (No. 74 of 1982). At the time of her detention she had been working in Cape Town as a journalist with Grassroots, a community-based newspaper. Several months prior to detention, she had appeared in a BBC television documentary which contained allegations of torture during detention. The South African Government announced its intention of investigating these allegations. It then produced a video, featuring segments of the documentary interview with Ms. Mhlawuli, who had been shot in the face by an unidentified assailant. She lost an eye as a consequence of the attack, and subsequently went into hiding out of fear for her life until she was detained. She was still undergoing treatment at the time of her detention.

153. The representative of the International Federation of Journalists (IFJ), appearing before the Working Group (746th meeting), reported that there were no writers or journalists currently in detention. One journalist, Rafiq Rohan, news editor of the Natal Post, was an awaiting-trial prisoner. He was facing charges under the Internal Security Act for alleged ANC activity.

154. In his testimony before the Working Group, the representative of the International Federation of Journalists (746th meeting) stated that there had been considerable repression of journalists through the courts in the month of June 1989. He submitted the following cases:

"1. Journalist Rafiq Rohan was awaiting charges under the Internal Security Act. He had appeared in court on 5 May 1989, and again on 22 May and 19 June 1989, when he was remanded until 10 July 1989. He had also applied to the Supreme Court to prevent police from interrogating him while he was awaiting trial. On 1 June 1989, his application was turned down.

"2. Cape Town journalist Velishwa Mhlawuli appeared in court on 12 June 1989 to face charges under the Internal Security Act; her case was remanded to 21 July 1989.

"3. Poet Mzwakhe Mbuli appeared in court on 2 June 1989, charged with possession of explosives. His case was remanded until 23 August 1989. He was released bail of R 1,000.

"4. Journalist Kerry Cullinan was facing charges of possession of banned literature and was due to appear in court on 4 July 1989.

"5. Editor Max du Preez was convicted of quoting a banned person and sentenced to six months' imprisonment and suspended for five years; his company was fined R 1,000 and also suspended. Du Preez was warned and discharged on charges of publishing an unregistered newspaper.

"6. Three Namibians - editor Gwen Lister, advocate Anton Lubowski and trade unionist Barnabus Tjizu - appeared in court on 16 June 1989 to face charges under the South African Police Act. They were remanded to 3 October 1989.

"7. Eight people appeared in court on 2 June 1989 to face charges for protesting the suspension in 1988 of the Weekly Mail. The eight, who had spent four days in detention after the incident, were told that all charges had been dropped. However, they were subsequently re-charged and were due to appear again on 18 September 1989.

"8. A former secretary of the Gardens Youth Congress in Cape Town, Julian Snitcher, was convicted and sentenced in June 1989 for publishing subversive statements in pamphlets. He was fined R 1,000 (or 100 days) and R 500 suspended for three years.

"9. The Appeal Court was considering an attempt by the State to overturn the acquittal of SABC journalist Christo Kritzinger for publishing a picture of a prisoner, Helene Passtoors.

"10. The Pretoria Supreme Court upheld a temporary interdict preventing Business Day from publishing a confidential letter sent by the Reserve Bank to commercial banks. The court also ordered that most of its judgement could not be published.

"11. Former editor of South, Rashid Seria, appeared in court on 6 June 1989 to face charges of contravening emergency regulations. He was due to appear again on 17 July 1989.

"12. Ignatius Jacobs, an executive member of the South African Youth Congress, was arrested and charged in court with breaking his restriction order. He was released on bail and the case was postponed to 20 August 1989.

"13. On 27 June 1989, the Pretoria Supreme Court rejected an application to prevent the magazine Finans en Tegniek from publishing an article alleging that a businessman had been involved in illegal practices.

"14. Allie Parker, of Allie's Printing Services in Cape Town, was facing charges under emergency regulations for printing five allegedly subversive pamphlets in January 1988. The pamphlets had been printed for Cape Town parents' and teachers' associations, the National Education Crisis Committee and Young Christian Students. He was due to appear again in July."

155. The representative of the ICFTU (746th meeting) reported to the Working Group that police were in the process of conducting a number of investigations against newspapers, including the Natal Witness, New Nation, Weekly Mail, South, Vrye Weekblad, the Sowetan and the Star. Some had received over a dozen notices of such investigations.

156. It was also reported to the Working Group at its 746th meeting that the Government of South Africa was using the reimposition of the state of emergency as an opportunity to renew hundreds of restriction orders on individuals and organizations. In some cases they even went further, by increasing the severity of the restrictions on some individuals. In particular, restriction orders which were served on United Democratic Front leaders Mr. Azhar Cachalia and Mr. Archie Gumede had caused a major outcry, because this action threatened the Natal peace talks. These additional restrictions were later lifted.

157. Given the pre-emergency statutes which, for years, had prevented the opinions of banned organizations and listed individuals from being quoted, the possibility of free discussion was severely hindered, if not rendered totally impossible. This made it extremely difficult for voters in the September 1989 elections to make informed decisions and created a situation whereby the white community in South Africa was woefully ignorant of life in its own country. Many journalists, mainly foreign correspondents, were accused of fanning the flames of misfortune by highlighting the problems faced by the country's black community. It was further reported that the South African Government had, in the past, described this process as "media terrorism".

158. The impact of censorship on the black community had been to inspire clandestine forms of resistance. Thus, the development of the "alternative press" was the most important aspect of this trend and compensated for the lack of information made available to the public in the "mainstream press".

159. According to the International Federation of Journalists/ICFTU mission report, after the imposition of the state of emergency, when a number of correspondents were expelled, a new generation arrived. Most of them lacked the background or experience to be able to "read between the lines", and lacked contact with the black people as they seldom ventured into the townships or rural areas. Even when there was good coverage by foreign correspondents, it was not published.

160. In a letter dated 8 August 1989 to the Minister of Law and Order of the Republic of South Africa, the International Federation of Journalists stated that they:

> "1. deplored the charges laid on 20 July 1989 against Anton Harber, editor of Weekly Mail, and former Weekly Mail reporters Franz Kruger and Joanne Bekker for, apparently, the disclosure of conditions of detainees;
>
> "2. expressed their shock at learning that Aggrey Klaaste, editor of the Sowetan, and Tertius Myburgh, editor of Sunday Times, were accused of a breach of the Internal Security Act for publishing a speech by Harry Gwela and quoting him;
>
> "3. deplored the suspended prison sentence of six months given to the editor of Vrye Weekblad, Max du Preez in June 1989 for quoting a Communist Party leader;
>
> "4. expressed astonishment that the State President had tea with Mr. Nelson Mandela, and yet the editor of Saamstann, Derick Jackson, was summoned to appear before the courts for having published a photograph of Mr. Mandela".

161. The representative of the International Federation of Journalists stressed the fact that journalists could no longer publish what they knew, had seen or heard. This led to bitter frustration on the one hand and acquiescence on the other. The emergency regulations were confusing and made it difficult for a journalist to know what he or she could publish. The witness reported that many journalists interviewed by the Joint Commission of IJF/ICFTU had to impose self-censorship to make sure their stories were published.

162. The same witness further reported that all journalists subjected to long-term detention since 1986 were black and many others had been the victims of attacks, beatings and particularly brutal repression.

C. Right to freedom of movement

163. The Ad Hoc Working Group notes with regret that freedom of movement remains severely curtailed in South Africa. The right to travel abroad continues to be controlled by the South African Government. Political activists remain subject to State control, and the Government does not consider that South African citizens have a right to a passport. The majority of dissidents are unable to travel out of the country. The Government, when it does make concessions, issues passports valid for a short period only. Mrs. Albertine Sisulu was granted a passport valid only for the period she was travelling when she went as an official guest of the United States and British Governments.

164. Once political detainees are released, they are subjected to severe restrictions. This results in virtual imprisonment in their homes and led to a situation where they were not able to work or visit their lawyers or doctors without prior consent from the authorities. The Working Group condemns these inhuman practices and demands an immediate change of these policies.

165. The "homelands" policy continues to be operative. The demarcation process under the Attestation of Boundaries of Self-Governing Territories Bill, when it becomes law, will have serious consequences as it will be possible to displace large numbers of people without actually removing them physically (see chapter II C. above).

D. Right to health

166. The system of segregation with regard to health and welfare facilities remains unchanged. The treatment of black patients at "whites only" hospitals as a result of the Mass Democratic Movement was an exception to the rule. As advance notice was given, the South African authorities issued instructions to hospitals that black patients should not be turned away. Although security police were posted outside hospitals, they remained discreetly in the background. The treatment of black patients at white hospitals is still prohibited (see Chapter II, para. 120).

167. On 5 April 1989, Ms. Irene Mzizi, an Orlando East nursing sister, allegedly died a slow death while trapped in a car after an accident in Windberg (Orange Free State) as a result of discrimination in health facilities. It was reported by the Sowetan of 20 April and the Weekly Mail of 21-27 April 1989, that soon after the accident, an ambulance aircraft airlifted two injured whites to hospital, leaving four blacks on the site. Ms. Mzizi and her husband were left trapped in their car. When freed later, she was found dead. The Provincial Administration claimed that it did not run separate white and black ambulances, and that the Mzizis had been left behind as Irene Mzizi was already dead and the others were not seriously injured. Pecc Mzizi, the dead woman's son, sustained a broken leg and injuries to his arms in the accident and attended the funeral in a wheelchair. Mr. Paul Mzizi (60), an Orlando pensioner, lost an eye and broke his right leg. This case illustrates the inhumane aspects of apartheid in health care.

Chapter IV

RIGHT TO WORK AND FREEDOM OF ASSOCIATION

Introduction

168. In accordance with Economic and Social Council resolution 1989/82, the Working Group continued to study the situation of trade union rights in South Africa.

169. In its various reports since 1967, the Ad Hoc Working Group of Experts has regularly given an account of the deterioration in the conditions of black workers in South Africa. Moreover, on the basis of specific allegations addressed to it last year concerning infringements of trade union rights, the Working Group came to the conclusion that trade union rights have been curtailed by various measures under the state of emergency and have been subjected to further threats under the Labour Relations Amendment Bill and the Promotion of Orderly Internal Policies Bill. The information received and the evidence heard during the period under review have once again confirmed that members of the two major labour federations, the Congress of South African Trade Unions (COSATU) and the National Council of Trade Unions (NACTU), have continued to face severe repression during the period under consideration. The Labour Relations Bill, which has now become law, is considered by the two main trade union organizations as a severe handicap to most recognized forms of industrial action. Black membership of trade unions, which had developed tremendously over the last six years, now appears to have slowed down. On the other hand, it is no longer accurate to refer to these organizations as black unions, since they have also acquired white members.

170. In fulfilment of its mandate in accordance with Economic and Social Council resolution 1989/82, the Working Group analysed the situation, on the basis of information available to it, under the following four headings: right to work, situation of black workers, trade union activities, and action against trade unions.

171. The Working Group received considerable evidence and reports on the question of trade unions and their action with regard to the freedom of association, as well as the conditions of black workers under the security laws and emergency regulations currently in force.

172. Several witnesses referred to the matters under consideration, especially the representatives of the International Labour Organisation and the International Confederation of Free Trade Unions.

A. Right to work

173. In his testimony before the Ad Hoc Working Group of Experts in August 1989, the representative of the International Labour Organisation (ILO) (748th meeting) stated that it was very difficult to estimate the number of unemployed in South Africa, especially as information from the so-called independent "homelands" was not available. None the less, according to the Report of the Director-General of the ILO, there were about 6 to 7 million persons endemically unemployed, a majority of whom was from urban areas.

174. Referring to the 1989 Special Report of the Director-General of the ILO on the Application of the Declaration Concerning Apartheid in South Africa and Namibia, the witness noted that increasing inflation in South Africa had coincided with very high unemployment during the period under consideration. He drew the attention of the Working Group to the fact that the late Governor of the Reserve Bank of South Africa had been in agreement with the economists employed by the major mining companies and other employers, as well as with academic analysts in South Africa, when they said that the economy of the country was in a perilous state and that the situation as regards employment was very serious. It was generally agreed that the solution did not lie in economic reforms, but rather in a major change in the structure of society as a whole through the total dismantling of the system of apartheid.

175. In this context, in his testimony before the Working Group, the representative of the Johannesburg-based Human Rights Commission (754th meeting) referred to the South African economy and traced the origins of the current crisis back over the past few years. He stated that when the South African Government had introduced the tricameral Parliament in 1984, it was massively rejected by the unenfranchised black majority, culminating in protests all over the country. To deal with the unrest, the Government had retaliated by sending the army into the townships. As the situation deterioriated further, the Government had declared a state of emergency. According to the witness, this marked the beginning of the capital outflow.

176. The same witness stated that, faced with a huge foreign debt, the South African Government unilaterally declared a moratorium on debt repayments on 1 September 1985. The flight of capital has continued ever since, and foreign investment has declined steadily. Subsequently, discussions took place between the South African Government and 34 major and 230 minor international banks, through the mediation of a Swiss ex-banker, Dr. Leutwiler, which resulted in a rescheduling of the debt repayment to mid-1990. Further, he said that only a massive injection of foreign capital could help the estimated 35 per cent unemployed. He also said that the cost of maintaining the system of apartheid amounted to around 50 per cent of the budget expenditure.

177. To restore confidence in order to encourage foreign capital investment, the witness said that it would be necessary to first create the right atmosphere by lifting the emergency. However, the prospect of anti-apartheid protest movements becoming even stronger than before deterred the South African Government from doing so. The unemployment of black workers increased as the economic crisis worsened.

178. Concordant oral and written testimonies stressed the exploitation of black workers, who were placed near white towns and forced to seek employment out of the so-called independent "homelands", as no jobs were available to them in the areas to which they had been forcibly removed.

179. The debate over the likely efficacy of sanctions in contributing to hastening the end of apartheid and facilitating non-violent change continued both domestically and internationally. 1/ No significant new sanctions were announced by South Africa's major trading partners, and there were signs that the rate of disinvestment by foreign companies was slowing down. Nevertheless, there was evidence that the existing sanctions as well as the

reluctance of international financial institutions to make loans to South Africa, were beginning to have an economic and political impact (see para. 661 of the previous report of the Group (E/CN.4/1989/8)).

180. It was reported to the Working Group that a group of independent experts consisting of three eminent persons was appointed by the International Labour Organisation (ILO) in July 1989, to follow up and monitor the implementation of sanctions and other action against apartheid. 2/

B. Situation of black workers

181. The most serious invasion of the rights of workers in South Africa arises out of the new provision under the Labour Relations Amendment Act enacted on 12 August 1988, which enables employers to sue trade unions for damages suffered as a result of "stay aways". Workers can no longer channel their grievances effectively through their trade unions, and industrial action has become extremely difficult. In losing the right to strike, trade unions have also lost their bargaining power.

182. It was reported by the representative of the International Confederation of Free Trade Unions (ICFTU) (747th meeting) that employers have been given the right to negotiate with minority unions, thus undermining the principle that unions with a majority of 50 per cent plus one have the right to represent the whole workforce. As a result of this provision, employers are able to achieve retrenchment of workers with greater ease.

183. The witness also referred to the situation of farmworkers, who, not being affiliated to trade unions, are particularly open to abuse. He stated that brutality against farmworkers under the emergency laws has become a regular feature in rural South Africa. In addition, the following information submitted to the Working Group supports the allegations of the witness.

184. Farm workers on the largest citrus estate in Africa, near Zebediela in the Northern Transvaal, went on strike on 3 May 1989. The orange-pickers, numbering nearly 1,200, were demanding a 45 per cent wage increase over their current wages which ranged from R 65 to R 165 per month. The strike began when the State-owned Zebedelia Citrus Estates refused to recognize the National Union of Farmworkers (NUF). According to a union official, a Supreme Court application by the NUF for an order restraining farm management from evicting strikers and calling on police to intervene in the dispute was postponed on 15 May 1989. The management had agreed not to call in the police until the court application was dealt with, and to try and settle the strike through negotiations. However, management did ask the police to intervene. A routine "unrest" report issued by police headquarters in Pretoria on 16 May 1989 said, "A large group of blacks refused to disperse when requested to do so by both management and police. Police used quirts and patrol dogs to disperse them. Twelve people were slightly injured". According to Mr. Tshaka Molestsane, NUF General Secretary, "The youths managed to run away but many of the workers were older people who could not escape. They were bitten by dogs and beaten with batons". 3/

185. The same witness further testified that children as young as eight years of age were working on some southern Transvaal farms for as little as R 2 per week. Men often earned around R 40 per month. The witness mentioned the case of Mr. Lacas S. Sibanyone, a farmworker in the Orange Free State, who reported

to the ICFTU that his wages were R 8 per month and six bags of maize-meal per year. While at work, Mr. Sibanyone injured his left foot and went to a doctor, who gave him a medical certificate for seven days' sick leave. However, when he returned to work, he was dismissed for having been absent. He was given 30 days' notice to leave the farm and find alternative accommodation. As a farmworker, Mr. Sibanyone was largely outside the sphere of the law. The witness also described the "tot system", whereby farmworkers were partly paid in kind with alcoholic beverages. Contrary to the situation in the past, the unions can no longer prevent this type of payment by leading "product boycotts", which have now been made illegal under the newly amended labour laws.

186. It was reported that several quarry workers near Pretoria were facing a slow and painful death after contracting silicosis, a disease resulting from the inhalation of silica dust. Under a free health scheme conducted by the Community Health Awareness Project (CHAP), it was discovered that many of the 70 workers examined at Hippo Quarries Ferro Plant suffered from chest pains, breathlessness, chronic cough (sometimes with blood) and weight loss. It was alleged by the workers that, in order to avoid payment under the Workmen's Compensation Act, the company had never informed them of the results of the two X-ray tests performed annually. 4/

187. In addition to the unjust provisions of the Labour Relations Amendment Act, trade unions have been intimidated in many other ways for the purpose of discrediting and undermining them. The following incidents of intimidation were reported to the Working Group (747th meeting):

(a) In a report received from the Secretary of the South African Chemical Workers Union (SACWU), it was stated that four white men stopped their car and alighted near Mr. Stanford Mazikwana and his colleague, who were walking to their place of work. They attacked and shot Mr. Mazikwana dead. His colleague escaped unhurt and heard the men say that they were "Witwolves" ("white wolves", a white supremacy terrorist group).

(b) Again, in a letter from the "Witwolves", the co-ordinator of the South African Volkswagen shop stewards' council, Mr. John Homomo, received threats of "an unfortunate accident".

C. Trade union activities

188. In spite of the curtailment of trade union rights under the new Labour Relations Amendment Act, trade unions have continued to stage protests. It was reported by the representative of the ILO (748th meeting) that, when "stay aways" occurred, they were on the basis of individual action and trade unions did not appear on the scene in their official capacity. This tactical exercise was undertaken in order to avoid victimization or being sued for damages for initiating industrial action.

189. The same witness stated that this placed employers in a very difficult situation, as they were unable to approach anyone for the purpose of negotiations on an official basis. The absence of official representation of the workers has led employers to start a move, together with the Congress of South African Trade Unions (COSATU) and the National Council of Trade Unions (NACTU), to seek the repeal of some of the recently enacted amendments to the Labour Relations Act.

190. He further added that COSATU and NACTU had held a joint summit meeting and, through their concerted efforts, representations had been made to the Government seeking removal of the offensive parts of the recent legislation. These concerted efforts had also been directed towards the South African Co-ordinating Council on Labour Affairs (SACCOLA), in an attempt to enlist its support in the campaign conducted by the trade unions in South Africa.

D. Action against trade unions

191. The representative of the ICFTU (747th meeting) stated that, under the new Labour Relations Amendment Act, trade unions had been under continuous attack. The Act was contrary to international labour standards and violated the democratic rights of trade unions to stage strikes.

192. The witness also testified that the Government had mounted a campaign against the trade union movement through widespread attacks on union offices and large-scale detentions, including police intervention with increasing violence in industrial disputes.

193. It was reported on 19 January 1989 that an independent forensic study of the Khotso House blast produced no evidence that the explosion had been caused by a bungled car bomb, as claimed by the South African police. Khotso House, head office of the South African Council of Churches (SACC), was blown up on 31 August 1988. The headquarters of the Congress of South African Trade Unions (COSATU) had been destroyed 16 months earlier. The Secretary of SACC, Rev. Francois Bill, said that the preliminary report prepared by a forensic expert had indicated that up to 75 kilos of explosive material, placed in or near the building's lift shaft, had been used in the blast. 5/

194. The same witness also reported that unprecedented media campaigns against trade unions had been launched during the period under consideration through the State-controlled radio and television services.

195. The witness further pointed out that, in spite of an agreement between COSATU and NACTU to refrain from implementing six clauses of the Act once it became law, the attitude of the employers had hardened and there was increasing collaboration between the Government and employers.

196. Of particular gravity were the curbs on the right to strike and the prohibition of "stay aways" for the same or a similar cause within 12 months. The power of the industrial courts had been curtailed under the new law, so workers claiming unfair dismissal no longer enjoyed the protection afforded to them through mediation in these courts.

197. In reply to a question from the Working Group on unfair dismissals, the representative of the ILO (748th meeting) stated that, previously, "unfair labour practices" had been well-developed concepts in the area of labour law in South Africa, because published principles of the ILO and decisions of the ILO technical bodies such as the Committee on Freedom of Association of the Governing Body, and the Committee of Experts on the Application of Conventions and Recommendations, were cited before and accepted by the South African Industrial Court. The Labour Relations Amendment Act was designed to circumscribe these concepts through various provisions. The witness further elaborated that the new law limited to a specific number the instances of

unfair labour practices. Trade unions were resisting these curbs on their rights, despite the difficult situation created by the severe limitations placed on their field of activity (see E/CN.4/1989/8, para. 284).

198. The same witness was unable to give any information on the question of decisions by the Labour Appeal Court, which had been established by the Labour Relations Amendment Act, and stated that the industrial courts appeared to continue adjudicating in industrial cases.

199. Within two months of the promulgation of the new law, the witness further reported, local and foreign employers initiated law suits against trade unions for huge sums of money.

200. The same witness reported that, in response to a complaint to the ILO by COSATU against the Government of South Africa, which was referred to the Economic and Social Council, the Government of South Africa had refused to have the whole question of the curtailment of legitimate trade union activities subjected to an enquiry by the ILO fact-finding and conciliation commission, on the grounds that "internal remedies had not yet been exhausted". This therefore resulted in a situation whereby the campaign against the Labour Relations Amendment Act and its offensive provisions had taken place wholly within South Africa.

201. On 25 April 1989, Mr. Moses Mayekiso, General Secretary of the National Union of Metalworkers of South Africa (NUMSA), and four co-defendants were acquitted by the Rand Supreme Court at the close of a trial in Johannesburg that began in October 1987. It was reported that the Mayekiso trial had drawn international attention because convictions would have widened significantly the Government's ability to prosecute political opponents on treason and subversion charges for what had hitherto been considered allowable political dissent. Legal observers reportedly believed that convictions would have wiped out the line between such dissent and criminal activity and subjected a wide range of union, church and community activists to potential treason indictments for non-violent organizing and protest. 6/

Chapter V

TREATMENT OF CHILDREN AND ADOLESCENTS

202. The Ad Hoc Working Group of Experts on southern Africa, in its report E/CN.4/1159, dated 27 January 1975, recommended that a study be made which would show the harmful effects of the policy of apartheid on the African family. The imposition of Afrikaans as the official medium of instruction under the Bantu Education Act gave rise to widespread dissatisfaction among black students, culminating with the Soweto uprisings in 1976. The ensuing repression of South Africa's children heightened the concern of the international community over their fate. Since then, the youth resistance has escalated as they have added their voices to the demand for freedom and democracy. Further, the Working Group in its report E/CN.4/1311, dated 26 January 1979, referred to the International Year of the Child and requested the Commission on Human Rights to instigate an investigation into the lot of black children in South Africa, in conjunction with the United Nations Children's Fund, the United Nations Educational, Scientific and Cultural Organization, the World Health Organization and the Food and Agriculture Organization of the United Nations.

203. By resolution 5 (XXXVII) of 23 February 1981, the Commission on Human Rights requested the Ad Hoc Working Group, in co-operation with the Special Committee Against Apartheid, to study the effects of the policy of apartheid on black women and children in South Africa, in conformity with General Assembly resolution 35/206 N of 16 December 1980. Consequently, a mission of enquiry was held in London from 29 June to 3 July 1981 and the Working Group prepared a report which dealt, inter alia, with the question of children in prison as well as the treatment of children involved in political trials (E/CN.4/1497, paras. 89-106).

204. In subsequent reports, the Working Group continued to concern itself with this question and it examined the prevalent conditions in prison as they affected children and especially the treatment of children in prison (see E/CN.4/1986/9, paras. 55-60; E/CN.4/AC.22/1987/1, paras. 80-94; E/CN.4/1988/8, paras. 68-91).

205. On 8 December 1988, the General Assembly adopted resolution 43/134, entitled "Torture and inhuman treatment of children in detention in South Africa and Namibia", in which it, inter alia, requested all relevant United Nations bodies, specialized agencies and non-governmental organizations to intensify the world-wide campaign aimed at drawing attention to, monitoring and exposing these inhuman practices; requested the Commission on Human Rights to continue to pay special attention to the question of detention, torture and other inhuman treatment of children in South Africa and Namibia; further requested the Secretary-General to submit a report to the General Assembly at its forty-fourth session on the implementation of the present resolution; and decided to discuss, at its forty-fourth session, torture and inhuman treatment of children in detention in South Africa and Namibia under the agenda item entitled "Torture and other cruel, inhuman or degrading treatment or punishment".

206. By resolution 1989/4 of 23 February 1989, the Commission on Human Rights, inter alia, reiterated the condemnation of the detention, torture and inhuman treatment of children in South Africa and Namibia as well as the demands

expressed by the General Assembly in this regard and appealed to the international community to adopt concrete and effective measures to bring pressure to bear against the Government of South Africa until it dismantled apartheid and abandoned all inhuman practices associated with this policy. It further requested the Ad Hoc Working Group of Experts on southern Africa to pay special attention to the question of detention, torture and other inhuman treatment of children in South Africa and Namibia and report to the Commission on Human Rights at its forty-sixth session.

207. The Criminal Procedure Act 1977 requires that children between the ages of 7 and 18 shall be heard in juvenile courts. The only difference between these and ordinary criminal courts is that trials of juveniles are held in camera, and the defendants may be assisted by their parents or guardians. However, the courts are only obliged to inform the parents or guardians of a child's arrest and court appearance if the parents or guardians reside in the same magisterial district as the court and are traceable without delay. It is therefore possible for a child to be arrested, held, tried, convicted and jailed without the knowledge of his or her parents. As far as detention without trial is concerned, there are no special provisions for children; detention is in effect imprisonment; therefore, the State does not abide by the Child Care Act of 1983. There are severe restrictions on visits by parents, relatives and legal practitioners. Visits are a privilege that have to be fought for, not a right. Lawyers must obtain permits for each visit to every detainee. Gaining access to detainees is therefore an extremely arduous process.

208. Under the emergency regulations, child detainees can be held indefinitely and without the rights of other long-term prisoners, such as the right to communicate with the outside world, the right to study or read, or to consult doctors of their choice. The detainee has only two rights in detention: access to a Bible and half an hour or an hour of exercise per day.

209. The Working Group is deeply concerned that, in some cases, children were being incarcerated for as long as three years without being charged or tried. During this period, they had no access to any educational facility and the break in their schooling would inevitably reflect on their future career and life in general. Further, they were bound to be adversely affected by the adult and often hardened criminals, from whom they were not kept separated.

210. When detained children are released, usually without even being charged, severe restrictions are imposed on them. A case in point is that of Cecil Mowela, of Soweto, who was 16 years old when he was detained in 1988. According to information received by the Working Group, he spent one year in detention and was released in March 1989, after being among the first of 20 detainees to embark on the nationwide hunger strike. Upon his release, he was served with restriction orders which restricted him to the magisterial district of Johannesburg. He was prevented from taking part, in any manner whatsoever, in the activities of Soweto Students' Congress, Soweto Youth Congress or the Student Representative Council at his school. He was restricted to his home between the hours of 6:00 pm. and 5:00 am. and had to report to the police station daily. He was also banned from attending meetings and from criticizing any acts or policies or proposed acts of the South African Government or local authorities.

211. The representative of Amnesty International (753rd meeting) informed the Working Group that, between June 1986 and June 1989, some 32,500 persons were estimated by human rights monitoring groups to have been detained under the consecutive states of emergency, most of them in the early period of the emergency. Of those detained, 9,800 are believed to have been children under the age of 18 years. Thirty-nine of them were still subject to restriction orders on 1 March 1989. Reports from human rights monitoring groups concerning children held in custody suggested that between 80 and 90 per cent have alleged that they experienced torture while in detention. Although the 1983 Child Care Act states that no child under 18 may go to prison, a court ruling in 1987 reportedly held that the state of emergency regulations overrode this. Consequently, children have no special protection under these regulations.

212. A representative of the African National Congress (749th meeting) reported that, of 64 adolescents known to be in detention in March 1989 in the Pretoria, Witwatersrand and Vereeniging (PWV) area, 2 were aged 15, 12 were 16 or 17 years old, and 33 were 18. Fourteen of these children had been in detention since 1986, including one 16-year old; one had been detained since 1987 and 22 since 1988; 27 were detained in 1989.

213. It is difficult for the Working Group to ascertain exactly how many children are in detention in South Africa at present. Information available usually refers only to specific areas, such as the PWV area mentioned above, and no figures covering the whole country appear to exist.

214. In a document dated 30 June 1989 submitted to the Working Group by Amnesty International, it was reported that the following 12 school children under the age of 18 had been held in detention under the emergency regulations without being charged with any offence: Philip Khanyile (16) of Pietermaritzburg, Petrus Labasi (16) of Soweto, Jacob Mabilo (16) of Soweto, Isaac Matsipe (16) of Soweto, Thokozami Mchunu (17) of Pietermaritzburg, April Mohau (17) of Petchefstroom, Sipho Mngomezulu (17) of Pietermaritzburg, Marcus Murubani (17) of Soweto, Basil Ntungane (17) of Cape Town, Christopher Theletsani (16) of Soweto, Aubrey Sipho Zuma (16) of Soweto, Bafana Zwane (16) of Soweto. Amnesty International expressed concern that they may be at risk of ill-treatment, and called for their immediate and unconditional release unless they were to be charged with a recognizable criminal offence. Further, it was pointed out that April Mohan had been detained three times before under the state of emergency, and that Petrus Labasi had been detained three times in 1989. The students from Potshefstroom, Pietermaritzburg and Cape Town who had been arrested in April and May 1989 were being held under the state of emergency regulations issued in 1988. The five students from Soweto had been arrested on 14 and 15 June 1989, apparently in connection with unrest in Soweto schools, and were being held under the state of emergency regulations issued on 9 June 1989. Section 3 of both these regulations allows a member of the security forces to arrest any person if they deem it "necessary for the safety of the public or the maintenance of public order".

215. The same report further stated that, in addition to the above-named detainees, 10 other students from Meadowlands, Soweto, had been arrested on 29 May 1989 and detained for a week without charge, while two other Potshefstroom students, arrested on 20 April 1989, had been released on 21 June 1989.

216. However, in a letter dated 27 September 1989 in reply to a telex from the Special Rapporteur of the Commission on Human Rights on the Question of Torture dated 5 July 1989, the Government of South Africa denied allegations of the death of children in detention, as follows:

> "It is correct that 12 juveniles were at that time being detained under the State of Emergency arising from violence perpetrated in the Pietermaritzburg area. They were subsequently released.
>
> "The South African Ministry of Law and Order rejects allegations that between 80 and 90 per cent of juveniles in detention have been tortured and that between 13 and 20 died in police custody between 1984 and 1988 as false and malicious. The South African Ministry of Law and Order is prepared to investigate any substantiated allegations of this nature but no facts have been produced by anyone alleging such torture and deaths."

217. According to further information submitted to the Working Group by Amnesty International, 1/ the following eight Durban school students under 18 are reported to have been detained between 19 and 21 June 1989:

Name	Sex/Age
Emmanuel Mduduzi Hlongwane	Male (17)
Progress Sipho Mhlongo	Male (17)
Jimmy Mhlongo	Male (16)
Cyril Nhlanhla Mkhize	Male (14)
Themba Qaphelani Mkhize	Male (17)
Sanele Christopher Shinga	Male (17)
Zamokwakhe Sofunani	Male (16)
Thelelani Ximba	Male (14)

218. A report which was brought to the attention of the Working Group during the period under consideration stated that Emmanuel Khanyile and Bjekani Phewa were sentenced to death for the murder of seven kwaMashu schoolboys. The two convicted men were alleged to be members of Inkatha. They were among 11 persons standing trial in the Durban Supreme Court for kidnapping, murder and attempted murder. The case reportedly arose in March 1986, when armed men from Lendelani hijacked taxis, drove through kwaMashu, and kidnapped children of school-going age. Eight of them were assaulted and stabbed. One of them survived and gave evidence of what Mr. Justice Broom during the trial called "an efficient, well organized, well executed slaughter". Four of the accused were acquitted, and the remaining 5 were sentenced to between 8 and 16 years' imprisonment for kidnapping or being accessory before the fact of the murders. 2/

219. The Ad Hoc Working Group noted with grave concern the information contained in the Amnesty International report 3/ according to which, between June 1988 and February 1989, more than 200 children under the age of 18 had been detained without charge under the emergency regulations. Although most of them apparently had been released in the period from April 1989 to the reimposition of the state of emergency in June 1989, the report stated that about 40 children had been placed immediately under restriction orders limiting their freedom of movement and association, and effectively prohibiting them from any political activity.

220. In a report submitted by a member of the South African Human Rights Commission, entitled "Children and Repression 1987-1989", it was stated that the following children had died in detention, police custody or in mysterious circumstances:

Name and Age	Date	Reason
Basenki Botsani (12)	January 1989	Shot while trying to escape arrest after being seen allegedly breaking and entering.
Willem Diebin (12)	March 1989	Shot by an off-duty policeman who opened fire on people in Blikkies township. The policeman has been suspended and charged with murder and attempted murder.
Dinana Mbetheni (12)	April 1989	Found hanging from an electric wire tied to a bar in his cell at a police station in the Ciskei.

221. It was brought to the attention of the Working Group that, in his annual report for the year 1987/88, the Auditor General stated that the South African Police paid out R3,449,733 in compensation for 465 claims. Of this, R522,000 was paid for unlawful arrest, R1,800,000 for injuries as a result of police action in riots, R593,000 for injuries as a result of normal police action, and the remainder, nearly R3,500,000 for injuries to bystanders, loss of maintenance and income, loss of and damage to property, medical, funeral and other expenses, and a R3,487 claim for loss of Government money through negligence. Some of these cases relate to claims made by parents on behalf of their children. The majority of the widespread allegations of assault never get to court, for various reasons. They include the fear of intimidation and reprisals from the police, lack of evidence or finance, and, in the case of alleged assault and torture of children in detention, the fact that they are released after their wounds have healed. 4/

222. In a written submission dated September 1989, forwarded to the Working Group by the International Defence and Aid Fund for South Africa (IDAF), entitled "Children in South Africa: Repression and Resistance", it was reported that the emergency regulations gave the police and army extremely wide powers, with virtually no legally enforceable limits, and that they made no distinction between adults and minors. Referring to police and vigilante violence, the document gave the following instances of ill-treatment of children:

(a) In March 1989, a 12-year old boy was killed and an 18-year old wounded when police opened fire on a crowd in Upington, Northern Cape. Witnesses said that the policemen, who alleged that they were being stoned, were drunk. 5/

(b) In May 1989, a 16-year old boy, who wished to remain anonymous for fear of reprisals, spoke to a newspaper journalist of his two years of fear since being trapped under a pile of corpses of persons killed in a vigilante massacre in Natal. He was one of the estimated 20,000 displaced persons in the area. 6/

(c) On 6 September 1989, election day, it was reported that more than 20 people had been killed during police attacks. Yvette Otto, aged 16, died after being shot in the chest at point-blank range by a policeman as she came out onto the street after visiting a friend. Patrick Miller, aged 13, was shot in the head and killed as he walked to the shops. A three-year old girl standing in a doorway with her mother was injured when she was hit in the face by birdshot. A community worker described helping about 50 children with injuries caused by shotgun fire and rubber bullets as well as by tear-gas. 7/

223. The IDAF report further stated that children involved in resistance in educational institutions had experienced extensive deployment of "security forces" against them. Special emergency regulations had been issued, controlling their movements during school hours and prohibiting the teaching or study of anything but the official syllabus. To break class boycotts, troops and police had roamed the streets in armoured vehicles, picking up and intimidating children suspected of boycotting schools.

224. Armed with the wide powers given to the police and army, and protected by the indemnity against civil or criminal proceedings arising from acts "performed in good faith" under the emergency regulations, the police and troops patrolling the streets in armoured vehicles had broken up gatherings by the use of tear-gas and rubber bullets or live ammunition, followed by arrests and detentions. It was reported that children had been foremost among their victims, particularly during school boycotts.

225. It was stated in Special Report SR.2 of the South African Human Rights Commission entitled "Days of Defiance: A special report on repression, 1 August and 6 September 1989" that, of the 252 persons detained at that time under emergency regulations, 20 were under 18 years of age, and 14 had been detained before.

226. In an article on the responsibility of doctors towards detainees under the emergency laws, Mr. David McQuaid-Mason, Professor of Law at the University of Natal, Durban, urged the Medical Association of South Africa (MASA) to co-operate with medical human rights organizations and issue clear instructions to its members concerning the treatment of detainees, particularly in relation to ethical problems relating to conditions of treatment and confidentiality. He further stated that MASA was "still equivocal" on crucial issues: it had not yet "officially denounced the policy of apartheid, or detention without trial, or the detention of children, even though it had acknowledged that some detainees had been seriously abused". 8/

227. On 5 June 1989, the Federal Council of the Medical Association of South Africa unanimously adopted a code for handling children in places of detention, entitled "Policy statement on discrimination in medical practice", which refers to, inter alia, the special responsibility of the arresting officer when dealing with children, the necessity of informing the parents within 24 hours of a child's arrest, and of releasing the child into the custody of the parents.

228. The representative of the International Confederation of Free Trade Unions reported to the Working Group (747th meeting) that, although 22 children were announced as being imprisoned, it was believed that the

true figure was probably nearer 2,000. The witness described how, in 1986, his aunt's house had been bombed by the "Witwolves" ("white wolves") allegedly because his cousin was an activist in Kagozo, Transvaal. After the ensuing police check, his aunt's grandchild had been detained for 36 hours without anyone being informed of the child's whereabouts.

229. After having heard the allegations presented to it, the Working Group condemns, without reservation, the lack of Government concern for the violation of the human rights of the children of South Africa in matters of freedom of movement and right to education and health.

PART TWO: NAMIBIA

I. GENERAL

230. After World War I, the League of Nations assigned Namibia, which was known as German South West Africa, to South Africa as a mandated territory. However, because of grave abuses and violations of contractual obligations by South Africa, the United Nations General Assembly revoked the mandate in 1966. The International Court of Justice adjudicated several times that South Africa has been in illegal occupation of Namibia ever since.

231. In 1976, the Security Council unanimously adopted resolution 385, which required withdrawal of South Africa and transfer of power to the United Nations. It was proposed that elections would then be held under the aegis of the United Nations, to select delegates to draft a constitution for an independent Namibia.

232. On 10 April 1978, the United States, United Kingdom, France, West Germany and Canada submitted the main "proposals for a settlement of the Namibian situation" (see S/12636). The aforementioned countries became known as the Contact Group. On 29 August and 28 September 1978, the Secretary-General issued two subsidiary documents (S/12827 and S/12869, respectively) for the purpose of implementing the proposals of the Contact Group and by way of an explanation of the proposals. On the basis of the foregoing the Security Council adopted resolution 435 on 29 September 1978 which, inter alia, provides for the establishment of the United Nations Transition Assistance Group (UNTAG), which includes both a civilian and a military component, functioning under the authority of the Security Council resolution 435 (1978) and assisting the Special Representative of the Secretary-General for Namibia in his task of monitoring and supervising the free and fair election of a Constituent Assembly. It may be mentioned that not only the elections but also all aspects of the preceding and subsequent political process must be free and fair.

233. It may be noted that many units now operating under the effective control of, or in co-operation with, the South African Defence Force (SADF) did not exist when Security Council resolution 435 (1978) was adopted. The South West African Territorial Force (SWATF) and the Counter-insurgency Unit (COIN), popularly known as "Koevoet" ("crowbar"), are examples of such units. 1/

234. In December 1988, as a result of negotiations held by the parties concerned, the independence agreement for Namibia was concluded (see Annex). It included the following provisions:

(1) Release of political prisoners

(2) Return of political exiles

(3) Repatriation of refugees

(4) Abolition of all discriminatory laws. 2/

235. On 16 February 1989, the Security Council adopted resolution 632 (1989) by which it decided to implement its resolution 435 (1978) of 29 September 1978 in its original and definitive form to ensure conditions in Namibia which would allow the Namibian people to participate freely and without intimidation in the electoral process under the supervision and control of the United Nations leading to early independence of the territory.

236. The implementation of the settlement plan began in April 1989, entrusting UNTAG with the task of monitoring the territory's transition to independence.

237. As in previous years, the Working Group analysed the situation of human rights in Namibia on the basis of the testimonies and other relevant material received from various sources. In addition, taking into account the specificity of the current situation prevailing in Namibia, the Working Group relied extensively on the information contained in the report of the Secretary-General of the United Nations submitted to the Security Council in accordance with paragraph 9 of Council resolution 640 (1989) of 29 August 1989 (see S/20883 and S/20883/Add.1).

238. As stated in the report of the Secretary-General, under paragraphs 7 (b) and 7 (c) of the United Nations settlement plan, all Namibian political prisoners were required to be set free. It was stated in the report of the United Nations Mission on Detainees that, on 24 May 1989, UNTAG military observers stationed in Angola had been enabled to interview about 201 former detainees who had been released by SWAPO. On 4 July 1989, 153 ex-detainees, including 18 children, were repatriated to Namibia from Angola, followed by two further groups of 63 and 16 on 29 July 1989 and 8 August 1989, respectively. 3/

239. On 20 July 1989, 25 Namibian political prisoners were released from the central prison in Windhoek by the South African authorities. It was alleged that both SWAPO and the South African authorities were still holding detainees. In reply to these allegations, the Administrator-General for Namibia, on behalf of the South African Government, replied that the persons on the lists submitted to him had either been released or were unknown to the South African authorities.

240. SWAPO stated that it no longer held any detainees, and invited the international community to conduct an investigation.

241. The Mission on Detainees, established by the Special Representative of the Secretary-General in pursuance of paragraphs 7 (c) and 7 (d) of the settlement proposal for Namibia visited Angola and Zambia from 2 to 21 September 1989. Its main purpose was to ascertain whether any Namibians were still being detained by SWAPO, at locations already identified or elsewhere in Angola and Zambia, and if so, to ensure that appropriate arrangements for their release and voluntary repatriation were promptly made in order to enable them to participate in the electoral process. Prior to the departure of the Mission, a consolidated list was prepared of the names of persons allegedly detained. It included about 1,100 names of persons reported to have died or to have been released and/or repatriated, and was intended to form a comprehensive reference source.

242. From 2 to 12 September 1989, the Mission visited a total of 22 locations in Angola, after which, from 14 to 20 September 1989 it visited a total of 8 locations in Zambia. The Mission visited virtually all of the sites where persons had been reported to be held in the two countries. On the basis of its findings, the Mission unanimously concluded that there were no detainees in any of the alleged detention centres and other places which it visited, and the majority of persons allegedly detained or missing had been repatriated or otherwise accounted for. 4/

243. The report of the Secretary-General 5/ stated that, on 6 June 1989, an amnesty was granted to all Namibian exiles. This permitted the beginning of the repatriation operation which had been entrusted to the United Nations High Commissioner for Refugees (UNHCR).

244. UNHCR established three air and three land entry points as well as five reception centres in central and northern Namibia, to receive, register and materially assist the returnees. By 29 September 1989, it was reported that 41,748 Namibians from 46 countries had returned home, and all but 579 had resettled in their former communities.

245. The planned return of Namibian refugees scheduled for mid-May was threatened with delay because of a dispute over abolishing all discriminatory laws, as required by Security Council resolution 435 (1978). The key obstacle reportedly was Proclamation AG.8, a law that makes provision for racially segregated administrations under the territory's two-tier governmental system. South Africa's Administrator-General, Mr. Louis Pienaar, insisted that by merely dissolving the political compound, the administrations themselves can continue to function within the terms of resolution 435 (1978). In the opinion of the Working Group, the delay in the return of refugees could have affected their participation in the electoral process.

246. The registration of voters began on 3 September 1989 and ended on 23 September 1989. Almost 700,000 voters were registered, with only 593 applications being rejected, in each case with the concurrence of the UNTAG supervisor.

247. According to information received by the Working Group, the Administrator-General for Namibia issued instructions that schools in Namibia were to remain closed from 30 October to 10 November 1989, to accommodate preparations for the elections. 6/

248. The following political parties presented electoral candidates:

(1) Action Christian National

(2) Democratic Turnhalle Alliance

(3) Federal Convention of Namibia

(4) Namibian Christian Democratic Party

(5) Namibian National Front

(6) National Patriotic Front of Namibia

(7) South West Africa People's Organization

(8) SWAPO - Democrats

(9) United Democratic Front

(10) Namibia National Democratic Party.

249. The elections, which took place from 7 to 11 November 1989, enable the elected delegates to form a constituent assembly that will enact a constitution for Namibia. The results of the elections which took place under the supervision of UNTAG were announced on 13 November 1989, with 7 of the 10 parties contesting the elections gaining representation. SWAPO won 41 seats, the Democratic Turnhalle Alliance won 21 seats, the United Democratic Front won 4 seats, the Action Christian National won 3 seats, and 3 smaller parties secured 1 seat each. The electoral process was described as "an exemplary lesson in democracy". As SWAPO had been unable to obtain a clear two-thirds majority, it was necessary for them to form an alliance with other parties.

II. HUMAN RIGHTS SITUATION IN NAMIBIA SINCE 1 APRIL 1989

250. According to information received by the Group, several persons were killed in April 1989, in clashes which occurred in the border area of northern Namibia. The final death toll, which was claimed to be about 300, was mostly among SWAPO combatants but also included some civilians. 7/

251. The representative of the International Defence and Aid Fund for South Africa (IDAF) (750th meeting) confirmed to the Working Group the widely reported deaths of SWAPO combatants, and referred to the opinion of Dr. Jan West, a forensic pathologist at Guy's Hospital, London, who stated that, "By the photographic evidence I have seen, the pattern of wounding is not compatible with death in a bush gun battle. I would anticipate more wounds, much more randomly distributed around the bodies of the victims, particularly when one considers that automatic weapons are being employed. The pattern we see here is familiar to those who have examined individuals shot by one or two rounds in the back of the head or neck, often when they have been forced into a kneeling position. Wounds of this type, when repeated through a number of bodies, indicate they were probably executed."

252. The same witness further reported that SWAPO had obtained a court interdict to have the bodies of some 280 persons buried in mass graves exhumed and proper autopsies conducted. Although this had been done, the witness alleged that the autopsies had been conducted without proper monitoring by UNTAG or by the lawyers who had begun the court action.

253. Various concurring reports referred to an independent United States-based television group, South Africa Now, which made a documentary film for television which reportedly showed that South African-led security forces effectively executed scores of guerrillas in Namibia by shooting them in the head at point-blank range. The documentary allegedly showed SWAPO fighters being buried in mass graves after having been killed during heavy fighting near the Angolan border. Although no conclusive evidence apparently emerged to substantiate the allegations, it was reported that the South African authorities had not issued a formal denial of the alleged executions. 8/

254. SWAPO officials and human rights groups in Namibia have alleged that South African-led security forces operating under "take-no-prisoners" orders have been systematically hunting down and eliminating SWAPO armed forces. 9/

255. It was reported in the Weekly Mail of 21 to 27 April 1989 that Mr. Simon O'Dwyer-Russel, a senior journalist from the London Sunday Telegraph, had said that what he had seen in the back yard of the Oshakati mortuary when he had viewed the corpses of 18 guerrillas in the second week of April had been profoundly disturbing. "None of the bodies showed the familiar signs of mutilation by heavy machine-gun bullets of the type used by the South African-led security forces. Most had apparently been shot in the face at close range".

256. It was further reported that Sunday Telegraph photographer, Mr. Judah Passow, offered this graphic recollection of what he had seen in Owamboland: "They had all been shot through the head with small calibre rounds. The security forces use weapons up to 20-millimetre cannons ... a 20-millimetre round will cut a body in half, or just shear a limb off a

body. There were no wounds corresponding to anything like that in the stack of bodies that we saw in Oshakati. In fact, all of the dead had been shot clear through the head, at what we could only deduce was point-blank range - effectively executed".

257. It was further reported that Swiss doctors in charge of treating three wounded SWAPO combatants at Oshikuku and Oshakati guarded them every night, as explained by Col. Bernard Revaz, who directed the operation in Namibia. The South African soldiers had allegedly encircled the mission at Oshikuku and the government hospital at Oshakati. They reportedly wanted to enter, interrogate and take the finger prints of the SWAPO combatants, whom they considered to be prisoners. However, the Swiss medical team had said that under the Geneva Conventions this could not be permitted. 10/

258. The representative of the International Defence and Aid Fund for South Africa (IDAF) (751st meeting) referred to a commission of inquiry under the chairmanship of Mr. Brian O'Lynn, a Windhoek lawyer, which had been set up by the Administrator-General of Namibia to investigate violations of human rights. The Commission had been considering complaints of intimidation and violations of legal rights. The witness stated that some of the 263 claims which had been launched concerned assaults, while others concerned the destruction of property.

259. On 8 May 1989, UNTAG reportedly disclosed that a senior officer in the local South West African Police Force (SWAPOL) had been suspended after complaints by United Nations police monitors about his conduct. It was reported that police monitors were investigating 50 cases of intimidation, assault and misconduct in Oshakati alone. 11/

260. It was further reported that civilians, especially those suspected of being sympathetic to SWAPO, were subjected to harassment and brutality by the South African security police. The principal culprits, it was alleged, were former members of the "Koevoet", a counter-insurgency unit which had been officially disbanded in December 1988. Most of them had been absorbed into other South West African police companies. 12/

261. The alleged incidents ranged from assault to forcing people to dig their own graves and then burying them. The victims had been rescued later by friends, but only after they had lost consciousness.

262. Mr. Anton Lubowski, a well-known civil rights lawyer and leading white official of SWAPO, was assassinated in Windhoek on 12 September 1989, as he was returning to his home. Responsibility for his murder has been claimed by "Witwolves". 13/

263. It was reported in the International Herald Tribune and The Independent of 6 December 1989 that a suspect, Mr. Donald Acheson, held in connection with the murder of Mr. Lubowski, was due to be formally charged with murder in a Windhoek court on 6 December 1989.

264. The police in Namibia were conducting a nation-wide search for three men freed in the ambush of a police vehicle on 4 December 1989. The three men were suspected of being right-wing terrorists and were being held in connection with a hand-grenade attack on a United Nations post in August 1989,

when a black security guard was killed. It was reported that the South African police believed the three men to be linked with the neo-Nazi Afrikaner Resistance Movement (AWB).

265. Two former policemen, Mr. Ferdinand Bernard and Mr. Calla Botha, who are being detained in Johannesburg under the emergency regulations in connection with the killings of anti-apartheid activists David Webster and Anton Lubowski, were also alleged to be linked to the three fugitives mentioned above. (See also Chapter I, para. 30 (i)).

266. It was widely reported that Mr. Leonard Natange Sheehama, a Namibian, was sentenced to death in April 1989. He had been convicted of murder following an explosion in Walvis Bay which had killed five persons in August 1986. The sentence was passed by the Cape Supreme Court, sitting in Walvis Bay. Mr. Sheehama was being held at Pretoria Central Prison and had not been included among the political prisoners released by the South African authorities to enable them to participate in the Namibian electoral process. 14/

267. According to the report of the Secretary-General, 15/ immediately prior to the implementation of Security Council resolution 435 (1978), the strength of the South African security forces in Namibia was as follows:

SADF	9 895	(of whom 1,015 were serving with citizen forces, commando units and ethnic forces)
Citizen forces	5 450	
Commando units	6 128	
Ethnic forces	9 270	
TOTAL	30 743	

268. In its previous reports, the Working Group had referred to the atrocities committed by the "Koevoet" which had been widely criticized by the international community. It was stated in the report of the Secretary-General on the implementation of Security Council resolution 640 (1989) concerning the question of Namibia, 16/ that following disbandment of "Koevoet" as a unit, approximately two thirds of its estimated 3,000 members had been absorbed into the South West African Police (SWAPOL). After the clashes which had occurred between combatants of SWAPO and the South African security forces in the early part of April 1989, the South African authorities had reconstituted the "Koevoet" unit, on the grounds that SWAPO combatants had crossed the border from Angola into Namibia. The report went on to say that in mid-May, the South African authorities had stated that "Koevoet" had again been disbanded, but most of its personnel had been reabsorbed once more into SWAPOL - an arrangement which was inconsistent with the settlement plan.

269. The report further stated that, although ostensibly members of SWAPOL, many ex-"Koevoet" personnel had continued to operate in the same manner as before the disbandment. They had continued to use armoured personnel carriers, known as "casspirs", mounted with heavy machine guns, in contravention of the provision of the settlement plan which stated that "the police forces would be limited to the carrying of small arms in the normal

performance of their duties". The United Nations Transition Assistance Group (UNTAG) had received many complaints of intimidation and other unacceptable conduct on the part of ex-"Koevoet" personnel, and UNTAG police monitors had on a number of occasions witnessed such behaviour.

270. The Secretary-General took the position that all ex-"Koevoet" personnel should be removed immediately from SWAPOL as well as from any other security-related duties. On 28 September 1989, the South African Foreign Minister and the Administrator-General announced that some 1,200 ex-"Koevoet" members of SWAPOL, representing 45 per cent of its total strength, then at Oshakati would be demobilized with effect from the following day. This demobilization was closely monitored by UNTAG, and the Secretary-General continued to press for demobilization of the remaining ex-"Koevoet" personnel.

271. The representative of the International Defence and Aid Fund for South Africa (IDAF) (750th meeting) stated that the "Koevoet" units were continuing their reign of terror, and referred to an attempt to assassinate an acting Vice-President of SWAPO, Pastor Hendrik Witbooi. The witness further stated that a police informer, Mr. Lukas Rooi, who had undergone an army explosives course, had confessed to attempting to plant a bomb under Mr. Witbooi's car, on the orders of two policemen.

272. A report issued by IDAF 17/ stated that, by the beginning of June 1989, over 120 complaints had been received by the United Nations authorities in Namibia concerning police intimidation. The following are a few of the cases reported:

(a) In early June 1989, police did nothing to restrain a group of Democratic Turnhalle Alliance (DTA) supporters who attacked a school and ransacked a private home. 18/

(b) On 9 June 1989, two "Koevoet" policemen wearing DTA T-shirts and carrying firearms threatened to assault persons attending a SWAPO barbecue at Okalongo. Later, a police van pulled up and policemen assaulted Mr. Freddie Bush. 19/

(c) On 19 June 1989, Mr. Marcus Siwarongo, a SWAPO supporter, was gunned down by police patrolling a road near Rurelu; he was shot in the stomach at close range. 20/

(d) On 27 June 1989, "Koevoet" members opened fire on a group of persons returning to their homes in Vukwalunudhi, seriously wounding Mr. Theophilus Kamati. 21/

(e) On 2 July 1989, a bar owner and his wife were shot dead at Oshakati. United Nations officials were alleged to have reported that a policeman was responsible. 22/

273. The representative of the International Defence and Aid Fund for South Africa (IDAF) (751st meeting) referred to various activities undertaken by Namibians to protest against the violent intimidation by "Koevoet" units, and described a class boycott by students in northern Namibia which had been launched on 18 May 1989. The students had demanded that "Koevoet" personnel

be withdrawn from the police force, that troops which had been confined to their barracks be disarmed, and that the United Nations monitor all police patrols. The boycott had spread, despite South African efforts to close schools and force children to sign undertakings not to engage in what was termed "political activities". By early June, the boycott had affected 168,000 primary and secondary pupils in Ovambo bantustan, as well as another 34,000 pupils from Kavango bantustan. The boycott had ended on 19 June 1989, after some concessions unrelated to "Koevoet" had been obtained from the authorities.

274. The witness further stated that, on 4 July 1989, another protest had been launched for a period of three days, in which students, teachers and all bantustan public employees in Ovambo bantustan had participated. Other protests included those initiated by church groups; SWAPO had also raised this issue.

275. In a report commissioned by the International Commission of Jurists, 23/ Mr. Geoffrey Bindman stated, inter alia, that a Legal Assistance Centre had been established in July 1981 as a public interest law centre, modelled after the Legal Resources Centre in South Africa. No legal aid was provided by the Government in Namibia, and there was a considerable shortage of lawyers in practice throughout most of the country. In Ovamboland, in the North, where more than half the population lived, there was not a single lawyer in regular private practice. Although the traditional means of settling disputes had always existed, there was a need to resort to the courts in the face of widespread allegations of torture, brutality, unlawful arrests and wanton destruction of property. The report added that these serious and persistent allegations had mainly been made against the "Koevoet".

276. It was further stated in the report that complaints had led to the issue of proceedings in some hundreds of cases, none of which had come to trial as at the time of writing of the report, but some had been settled by out-of-court agreement. The 263 pending cases on behalf of victims of alleged human rights abuses had been brought against the Administrator-General for Namibia, who was responsible for SWAPOL, and the South African Minister of Defence, in his capacity as head of the SADF. In June 1989, after using various delaying tactics, the Administrator-General claimed that the proceedings brought by the Centre were null and void, since it did not have the legal standing to act as attorney representing an individual litigant. After various technical arguments and submissions, the Centre became free to pursue its clients' litigations, but by then its work had fallen three months behind schedule.

277. The report stated further that in May 1989, the Centre applied on behalf of the Namibian National Students' Organization (NNSO) for an interdict against the South West African Territorial Force (SWATF) and the South West African Police (SWAPOL), to restrain them - and especially ex-"Koevoet" members - from making repeated assaults.

278. The report goes on to say that, among the individuals on whose behalf the Centre brought the application was Mr. Petrus Joseph, who described as follows his experience as a member of "Koevoet", for whom he had worked until February 1989. When he could stand it no longer and expressed the wish to

resign, he was immediately arrested on fabricated charges of "possessing communist ammunition" and kept in custody. Eventually, all charges were dropped and he was released. Mr. Joseph gave testimony under oath that the security forces in Namibia "are intent on waging a political campaign in favour of those parties who favour the interim government". He claimed to have been fed with anti-SWAPO propaganda and instructed to intimidate SWAPO supporters by, for example, arresting anyone wearing a SWAPO or trade-union T-shirt. Later, when he became aware that the police were looking for him, he went into hiding. The Legal Assistance Centre inquired on his behalf as to why he was wanted by the police, but no satisfactory reply had been received. On 28 July 1989, Mr. Joseph had informed a SWAPO official in Rundu that two "Koevoet" members had come to his home looking for him, and had informed a neighbour that they were watching him as he was suspected of hiding firearms in his house. On 2 August 1989, two policemen came to his home and, according to eyewitnesses, dragged him from the house and shot him dead. When an UNTAG policeman arrived on the scene, following a summons by Mr. Joseph's neighbours, he was told by a SWAPOL officer that a "terrorist" had been shot at Mr. Joseph's house.

1. Conclusions

279. The Commission, which has been studying the situation in Namibia for several years, decided to establish the Ad Hoc Working Group of Experts in 1967, with a mandate to monitor violations of human rights in Namibia.

280. During the period under consideration the Ad Hoc Group of Experts took note of the facts presented below, on the basis of which it draws the following conclusions:

(a) South Africa, which has been in illegal occupation of Namibia, has subjected its people to apartheid.

(b) During the implementation of the policy of apartheid, many Namibians were flogged and tortured for political reasons and for being supporters of SWAPO; they suffered damages in various ways and thousands left the country.

(c) Many Namibians have been wrongfully convicted, sentenced and incarcerated in South Africa; economic and social rights have been disregarded, and educational and cultural rights have been denied or otherwise granted only along racial lines.

(d) The general political context suggests that future developments are likely to be positive and, following the implementation of Security Council resolution 435 (1978) that launched the electoral process in November 1989, could lead Namibia towards its independence in accordance with the United Nations plan.

(e) The harassment of and confrontations with members of SWAPO by South African army units have continued.

(f) There have been atrocities, murders and several cases of summary execution, such as that of Mr. Anton Lubowski, a white member of the Central Committee of SWAPO and human rights advocate.

(g) Contrary to the spirit of Security Council resolution 435 (1978), the "Koevoet" (counter-insurgency unit) has not been effectively disbanded. Members of "Koevoet" have arrested civilians and been responsible for various kinds of exactions to which representatives of the United Nations Transition Assistance Group (UNTAG) can testify. Similarly, members of this expeditionary corps have sown terror by committing various acts of intimidation as well as attempted murder such as that of Pastor Hendrik Witbooi, the Acting President of SWAPO. Cases of torture and summary execution have also been reported.

(h) In the circumstances, a campaign of protest and boycott was launched by schoolchildren, civil servants and religious groups. Reactions include the legal proceedings instituted against the Administrator-General for Namibia and the South African Minister of Defence as those responsible for the maintenance of order and public safety respectively. The Group had not been notified of the results of these proceedings at the time it adopted its report.

(i) As indicated in paragraph 266, Mr. Léonard Natange Sheehama, a Namibian activist, was found guilty of the death of five persons as a result of an explosion at Walvis Bay and was sentenced to death by the Supreme Court of the Cape sitting at Walvis Bay in April 1989. Mr. Sheehama was not released when an amnesty of all political prisoners was declared.

2. Recommendations

281. The Ad Hoc Group of Experts submits the following recommendations on the basis of the above conclusions:

(a) The United Nations should steadfastly continue implementing its plan for Namibia in accordance with Security Council resolution 435 (1978) with a view to leading Namibia towards independence in a peaceful and democratic manner.

(b) To this end, not only should South African army forces operating in Namibia be withdrawn but the "Koevoet" should also be disbanded as a matter of urgency in order to restore the peace and public order which are indispensable to the successful implementation of the United Nations plan for Namibia.

(c) Since the people of Namibia, during the illegal occupation of their country, have suffered in many forms; since many innocent persons have been tortured and wrongfully convicted and imprisoned, and since private property has been destroyed during the illegal occupation of Namibia, the Group recommends the Commission to adopt a resolution:

(i) requesting an in-depth study of all damage caused during the illegal occupation of Namibia; and

(ii) recommending the setting up of a mechanism for settlement by which the damage occasioned could be compensated in an equitable manner.

(d) In the light of the development of the situation prevailing in Namibia and its accession to independence, and considering that the United Nations should be able to assist any country in accordance with Articles 55 and 56 of the Charter of the United Nations with a view to promoting universal respect for and observance of human rights and fundamental

freedom, the Ad Hoc Group of Experts recommends that the Commission on Human Rights should request the Secretary-General to provide any advisory services and any other appropriate forms of assistance in human rights that may be requested by the future Namibian Government in order to promote democratic development and to strengthen the institutions responsible for ensuring respect for and promotion of human rights. Such assistance, both technical as well as legal, could be provided by designating a body that would contribute to the proper functioning of the above-mentioned institutions and report to the Commission on Human Rights in close co-operation with the Namibian authorities.

(e) The Commission on Human Rights should authorize the Group to organize a seminar on human rights in post-colonial Namibia and the situation of children, in consultation with the future Namibian Government.

(f) The Commission on Human Rights should recommend that the Government of independent Namibia should accede, to all international human rights instruments.

Notes

Part One: Chapter I

1/ Sowetan, 30 January 1989.

2/ The Guardian, 30 January 1989.

3/ Sowetan, 18 April 1989.

4/ Sowetan, 20 April 1989.

5/ Weekly Mail, 21 to 27 April 1989.

6/ Sowetan, 21 February 1989.

7/ Sowetan, 23 February 1989.

8/ Human Rights Update, May 1989 (vol. 2, No. 1) paras. 43 and 44.

9/ Ibid. - pages 19 and 65.

10/ Ibid. - pages 19 and 65.

11/ Ibid. - pages 19 and 65.

12/ Human Rights Update, October 1988 to March 1989 (vol. 2, No. 1), May 1989.

13/ Ibid.

14/ Weekly Mail, 9 December 1988.

15/ Sowetan, 10 March 1989.

16/ Weekly Mail, 11 to 17 August 1989.

17/ Weekly Mail, 20 to 26 January 1989.

18/ Weekly Mail, 17 to 22 March 1989.

19/ Sowetan, 13 February 1989.

20/ Cape Times, 16 May, The Star, 17 May, and South, 18 May 1989.

21 Weekly Mail, 10 to 16 March 1989.

22/ Sowetan, 12 January 1989.

23/ Human Rights Update, July 1989, vol. 2, No. 2.

24/ Ibid.

25/ Le Monde, 2 October 1989.

26/ Sowetan, 1 February 1989.

27/ Sowetan, 12 January 1989.

28/ Weekly Mail, 27 January to 2 February 1989.

Chapter II

1/ Guardian, 4 February 1989.

2/ Weekly Mail, 27 January to 2 February 1989.

3/ Sowetan, 13 March 1989.

4/ Le Monde, 14 March 1989.

5/ The Times, 3 March 1989.

6/ Weekly Mail, 4 to 10 August 1989.

7/ Weekly Mail, 7 September 1989.

8/ The Times, 21 August 1989.

9/ International Herald Tribune, 8 September; Frontier Post (Pakistan), 15 September; Guardian, 16 September 1989.

10/ The Independent, 13 October 1989.

11/ Guardian, 12 September 1989.

12/ Weekly Mail, 21 to 27 April 1989.

13/ Weekly Mail, 21 to 27 April and 26 April to 4 May 1989.

14/ Sowetan, 21 April 1989.

15/ International Herald Tribune, 3 May 1989.

16/ Weekly Mail, 14 to 20 April 1989.

17/ Sowetan, 31 March; Weekly Mail, 31 March to 6 April 1989.

18/ Weekly Mail, 13 to 19 January 1989.

Chapter III

1/ Weekly Mail, 23 to 30 March 1989.

2/ Sowetan, 30 March 1989.

3/ Sowetan, 10 to 16 February 1989.

4/ Media Censorship: Report on ICFTU/IFJ mission to South Africa (29 April to 6 May 1989), Appendix 1.

Chapter IV

1/ International Labour Office, Special Report of the Director-General on the application of the Declaration concerning action against Apartheid in South Africa and Namibia, (Geneva, ILO 1989), p. 38.

2/ Ibid.

3/ Weekly Mail, 19 to 25 May 1989.

4/ Sowetan, 21 April 1989.

5/ Weekly Mail, 13 to 19 January 1989.

6/ Sowetan, 26 April 1989.

Chapter V

1/ AI Index: AFR 53/25/89, dated 14 July 1989.

2/ Weekly Mail, 10 to 16 February 1989.

3/ AI Index: AFR 53/25/89, dated 14 July 1989.

4/ Citizen, 14 February 1989.

5/ IDAF Report, September 1989 (p. 20); Cape Times, 20 March 1989.

6/ Ibid.

7/ Ibid.; The Guardian, 7 to 8 September 1989; The Times, 9 September 1989.

8/ Weekly Mail, 2 February 1989.

Part Two: Chapter I

1/ Extract from a paper submitted by "Lawyers' Committee for Civil Rights under Law".

2/ International Herald Tribune, 5 April 1989.

3/ Ibid.

4/ S/20883/Add.1.

5/ S/20883, dated 6 October 1989.

6/ Windhoek Observer, 15 April 1989.

Chapter II

7/ International Herald Tribune, The Times, 11 April 1989.

8/ The Times, International Herald Tribune, 21 April, Weekly Mail, 21-27 April, The Guardian, 25 April 1989.

9/ International Herald Tribune, 22-23 April 1989.

10/ Journal de Genève, 26 April 1989.

11/ The Guardian, 11 May 1989.

12/ The Times, 18 May 1989.

13/ International Herald Tribune, 16 September 1989.

14/ IDAF report on political death sentences, dated 11 October 1989.

15/ S/20833/Add.1.

16/ S/20883, dated 6 October 1989.

17/ Focus, No. 84, September-October 1989.

18/ The Namibian, 6 June 1989.

19/ The Namibian, 20 June 1989.

20/ The Namibian, 21 June 1989.

21/ The Namibian, 29 June 1989.

22/ Times of Namibia, 4 July 1989.

23/ Report of the mission of inquiry to Namibia entitled "The legal process in Namibia in the transition to independence" (28 August-September 1989).

Annex

AGREEMENT AMONG THE PEOPLE'S REPUBLIC OF ANGOLA, THE REPUBLIC OF CUBA, AND THE REPUBLIC OF SOUTH AFRICA

The Governments of the People's Republic of Angola, the Republic of Cuba and the Republic of South Africa, hereinafter designated as "the Parties",

Taking into account the "Principles for a Peaceful Settlement in Southwestern Africa", approved by the Parties on 20 July 1988, and the subsequent negotiations with respect to the implementation of these Principles, each of which is indispensable to a comprehensive settlement,

Considering the acceptance by the Parties of the implementation of United Nations Security Council resolution 435 (1978), adopted on 29 September 1978, hereinafter designated as "UNSCR 435/78",

Considering the conclusion of the bilateral agreement between the People's Republic of Angola and the Republic of Cuba providing for the redeployment toward the North and the staged and total withdrawal of Cuban troops from the territory of the People's Republic of Angola,

Recognizing the role of the United Nations Security Council in implementing UNSCR 435/78 and in supporting the implementation of the present agreement,

Affirming the sovereignty, sovereign equality, and independence of all States of southwestern Africa,

Affirming the principle of non-interference in the internal affairs of States,

Affirming the principle of abstention from the threat or use of force against the territorial integrity or political independence of States,

Reaffirming the right of the people of the southwestern region of Africa to self-determination, independence, and equality of rights, and of the States of southwestern Africa to peace, development, and social progress,

Urging African and international co-operation for the settlement of the problems of the development of the southwestern region of Africa,

Expressing their appreciation for the mediating role of the Government of the United States of America,

Desiring to contribute to the establishment of peace and security in southwestern Africa,

Agree to the provisions set forth below:

1. The Parties shall immediately request the Secretary-General of the United Nations to seek authority from the Security Council to commence implementation of UNSCR 435/78 on 1 April 1989.

2. All military forces of the Republic of South Africa shall depart from Namibia in accordance with UNSCR 435/78.

3. Consistent with the provisions of UNSCR 435/78, the Republic of South Africa and the People's Republic of Angola shall co-operate with the Secretary-General to ensure the independence of Namibia through free and fair elections and shall abstain from any action that could prevent the execution of UNSCR 435/78. The Parties shall respect the territorial integrity and inviolability of borders of Namibia and shall ensure that their territories are not used by any State, organization, or person in connection with acts of war, aggression, or violence against the territorial integrity or inviolability of borders of Namibia or any other action which could prevent the execution of UNSCR 435/78.

4. The People's Republic of Angola and the Republic of Cuba shall implement the bilateral agreement, signed on the date of signature of this agreement, providing for the redeployment toward the North and the staged and total withdrawal of Cuban troops from the territory of the People's Republic of Angola, and the arrangements made with the Security Council of the United Nations for the on-site verification of that withdrawal.

5. Consistent with their obligations under the Charter of the United Nations, the Parties shall refrain from the threat or use of force, and shall ensure that their respective territories are not used by any State, organization, or person in connection with any acts of war, aggression, or violence, against the territorial integrity, inviolability of borders, or independence of any State of southwestern Africa.

6. The Parties shall respect the principle of non-interference in the internal affairs of the States of southwestern Africa.

7. The Parties shall comply in good faith with all obligations undertaken in this agreement and shall resolve through negotiation and in a spirit of co-operation any disputes with respect to the interpretation or implementation thereof.

8. This agreement shall enter into force upon signature.

Signed at New York in triplicate in the Portuguese, Spanish and English languages, each language being equally authentic, this 22nd day of December 1988.

FOR THE PEOPLE'S REPUBLIC OF ANGOLA:	FOR THE REPUBLIC OF CUBA:	FOR THE REPUBLIC OF SOUTH AFRICA: